

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

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5 In the Matter of:

6 LEHMAN BROTHERS HOLDINGS INC., Case No. 08-13555-scc

7 Debtor.

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10 United States Bankruptcy Court

11 One Bowling Green

12 New York, New York 10004-1408

13
14 January 11, 2018

15 10:07 AM

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23 B E F O R E:

24 HON. SHELLEY C. CHAPMAN

25 U.S. BANKRUPTCY JUDGE

1 IN RE: RMBS Claims Estimation Trial

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25 Transcribed by: Dawn South and Sherri L. Breach

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P R O C E E D I N G S

THE COURT: everyone here that you need?

MR. MCCALLEN: Yes, thank you --

THE COURT: Okay.

MR. MCCALLEN: -- for Your Honor's intervention.

THE COURT: You're very welcome. Any time.

All right, please have a seat. I'm ready when you
are.

MS. BLACK: Your Honor --

THE COURT: Yes.

MS. BLACK: -- the trustees would like to call
Dr. Richard Ellson.

THE COURT: Yes. Dr. Ellson, please come up.

MS. BLACK: May I approach --

THE COURT: Yes.

MS. BLACK: -- I have a few binders.

THE COURT: Good morning. How are you?

DR. ELLSON: I'm fine, thank you.

THE COURT: If you would step up and raise your
right hand, please.

DR. RICHARD WAYNE ELLSON, WITNESS, SWORN

THE COURT: Very good. Have a seat, make yourself
comfortable. You have some water. And if you would like a
break at any time let us know, you do not have to wait for
the lawyers to ask for one.

1 THE WITNESS: And I appreciate that.

2 THE COURT: All right?

3 MR. SHUSTER: Thank you, Your Honor.

4 THE COURT: Thank you. Okay, Ms. Black.

5 DIRECT EXAMINATION

6 BY MS. BLACK:

7 Q Good morning, Dr. Ellson. Would you please introduce
8 yourself to the Court.

9 A Yes, my name is Richard Wayne Ellson.

10 Q Where do you currently work?

11 A I currently work as the principal of Ellson Consulting,
12 it's a consulting company that I formed in February of 2016,
13 and it focuses primarily on residential mortgage loans and
14 residential mortgage-back securities.

15 Q Thank you. I'd like to talk to you a little bit about
16 your background. You have an exhibit binder in front of you
17 that I may refer to during the course of your direct. For
18 now I would like to refer you to the document behind the tab
19 labelled TRX-641. Let me know when you're there.

20 A Yes. I see it.

21 Q What is this document, Dr. Ellson?

22 A That is my resume.

23 Q And is your professional experience and background
24 accurately summarized in the resume that is attached as
25 Appendix A to your affirmative expert report?

1 A Yes, it is.

2 Q Okay. In the interest of time I will focus on a few
3 key areas of your background starting with your educational
4 record.

5 MS. BLACK: Can we please have TRDX-320.

6 BY MS. BLACK:

7 Q Dr. Ellson, can you please walk us through your
8 academic background.

9 A Yes. In 1973 I earned a BA degree from Bucknell
10 University, I double majored in economics and international
11 relations. I went to graduate school at the University of
12 Florida where I earned a master's degree in economics in
13 1975 and a Ph.D. degree in 1977.

14 Q And what were you primary fields of study?

15 A My primary fields were urban and regional economics,
16 which obviously assesses urban areas, housing markets, and
17 differentials between regional economies. And another field
18 was econometrics, which is statistical modeling.

19 Q And does any of your educational background bear upon
20 the opinions that you are offering in this matter?

21 A Very much so, of the urban and regional field as well
22 econometrics both bear.

23 Q Now, I understand that you lay out your professional
24 accomplishments in your resume. I would like you to provide
25 a brief walk through of your career in academia as well as

1 in the private sector. Let's start with your economic
2 appointments.

3 MS. BLACK: If we could have TRDX-321, please.

4 BY MS. BLACK:

5 Q Can you please walk us through your academic
6 appointments. Where did you teach and what did you lecture?

7 A Okay. In 1979 I was offered a position at the
8 University of South Carolina, it was a joint appointment
9 with the Division of Research in the College of Business
10 Administration and the Economics' Department.

11 In the Division of Research I was asked to develop a
12 forecast -- an economic forecasting model for the State of
13 South Carolina, and also my responsibilities included grant
14 research, which I also did, and the grants included one from
15 the National Science Foundation.

16 In the Economics' Department I taught both
17 undergraduate and graduate classes. I also published in
18 journals, top economic academic journals, and as a result of
19 these efforts I was promoted to associate director in the
20 Division of Research and associate professor in the
21 Economics' Department with tenure.

22 Q Thank you. And what about the second academic
23 appointment?

24 A In August of 2016 I was named an adjunct professor at
25 North Carolina State University. I teach in the master's

1 program in financial mathematics. The course I teach is
2 bond markets and portfolio analysis. And I'm on the
3 executive board of that particular program as well.

4 Q Thank you. And does any of your work as an academic
5 bear upon the opinions that you are offering in this matter?

6 A Yes, very much so. Again, it relates to housing
7 markets and buy markets, both of which are very important in
8 this context.

9 THE COURT: Dr. Ellson, can I ask you to keep your
10 voice up a bit? Perhaps pull the microphone towards you a
11 little more.

12 THE WITNESS: Yes, ma'am.

13 THE COURT: Thank you.

14 THE WITNESS: Yes, Your Honor.

15 BY MS. BLACK:

16 Q Okay. Moving onto your professional experience in the
17 private sector.

18 MS. BLACK: Can we please have TRDX-322.

19 BY MS. BLACK:

20 Q When did your professional career in the private sector
21 begin, and in general terms what were the areas of your
22 professional experience?

23 A Well it began in 1987, but I have very broad-based
24 experience that extended over, you know, approximately 30
25 years. I worked both on the broker dealer side of the

1 business or what's known as the sale side. I've worked on
2 -- for banks and money managers and insurance company, which
3 is known as the buy side. I did research, I did modeling, I
4 managed research, I traded, and I did portfolio management.
5 So my experience is very broad-based.

6 Q Okay. I would like you to walk us through your
7 experience in research trading as well as structured finance
8 in a little more detail.

9 MS. BLACK: Can we please have TRDX-323.

10 BY MS. BLACK:

11 Q Can you tell us, Dr. Ellson, about your experience --
12 professional experience in those areas?

13 A Yes. In the research side I managed asset-back and
14 mortgage-back securities research at two firms.

15 At CS First Boston I had a staff of 20 people, my group
16 is responsible for all modeling, analytics, and databases
17 that were used by the traders and the sales people. I also
18 had a group that did market research. This was a global
19 position, I was the global head of mortgage and asset-back
20 research. I had a comparable position at UBS.

21 In terms of trading and portfolio management I had
22 three senior trading positions. I was the head of the
23 trading desk at Hartford Investment Management Company,
24 which is a subsidiary of Hartford Insurance, I actively
25 traded securities, I managed the desk, all sectors of the

1 desk with the exception of high yield and money markets.
2 That would include corporates, treasuries, mortgage-back
3 securities, asset-back securities, commercial mortgage-back
4 securities, and so forth.

5 My third primary position was as the senior portfolio
6 manager for the residential loan portfolio at Washington
7 Mutual, that was a \$90 billion portfolio. I managed that
8 portfolio, I bought (indiscernible - 7:47) into that
9 portfolio, I sold non-performing loans from the portfolio,
10 and I also traded there as well. I traded what's known as
11 mezzanine securities, which are securities not rated triple
12 A. They -- the ratings on those securities go from double A
13 down to triple B, where triple B is the lowest investment
14 grade rating on the market.

15 In terms of structured finance I worked on a number of
16 different projects, primarily internationally. I worked at
17 HypoVereinsbank, which is a German bank. I did some
18 transactions there. For example, we did a balance sheet
19 transaction for the bank as well as taking US domestic
20 assets and converting them from dollar to Euro and from
21 fixed rate to floating rate.

22 At Bear Stearns I also was involved in the first fixed
23 rate mortgage-back security transaction in the UK.

24 Q Thank you. Now, I'd like to focus on your background
25 in product and model development.

1 MS. BLACK: If we could have TRDX-324, please.

2 BY MS. BLACK:

3 Q Can you please walk us through your background in those
4 areas.

5 A Yes. My career started at Bear Stearns and I was hired
6 to develop and maintain and upgrade prepayment models. I
7 did the modeling. Prepayment models are very important for
8 the valuation of mortgage-back securities. Obviously each
9 month the borrower has multiple options, they can pay their
10 principal and interest, they could prepay. For example,
11 they could refinance their mortgage in which the loan would
12 be terminated, or they could sell their home, again, the
13 loan could be terminated. Prepayment modeling tries to get
14 at that timing in which prepayments would occur. It's very
15 critical as I said for the valuation of mortgage-back
16 securities. In that context I also met frequently with
17 clients given that importance.

18 At Donaldson, Lufkin & Jenrette I was the senior vice
19 president there. I did prepayment modeling there as well.
20 I also got involved in portfolio strategies and again had
21 client contacts domestically and internationally.

22 At Credit Suisse First Boston as I mentioned I was the
23 global head of mortgage and asset-back research. This was a
24 management role. I moved from being the modeler to managing
25 the modeling process as well as the development of other

1 analytics. Again, I oversaw a staff of 20 people in that
2 role.

3 And then at UBS is a very similar situation as Credit
4 Suisse First Boston, a smaller scale, but it's still
5 managing the research group and developing the valuation
6 models for mortgage-back securities.

7 And my last position was at Andrew Davidson & Co., I
8 was the head of a group called enhanced solutions group.
9 Within that group we did consulting work as well as new
10 product development, and LoanKinetics falls into the
11 category of new product development. And I was the product
12 manager for LoanKinetics.

13 Q Thank you. And do I understand you correctly that
14 earlier in your career when you were at Bear Stearns and DLJ
15 you were a modeler whereas later in your career in your
16 positions at Credit Suisse, UBS, and ADCO you oversaw
17 modeling in more of a supervisory or management role?

18 A That's correct.

19 Q Okay. I'd like to focus now on your role at ADCO and
20 specifically with respect to LoanKinetics.

21 MS. BLACK: Can we please have TRDX-325.

22 BY MS. BLACK:

23 Q Can you tell us about it?

24 A Yes. I was the product manager for LoanKinetics. As
25 -- in 2012 I was asked by Andy Davidson, the president of

1 Andrew Davidson & Co., to investigate to see whether there
2 are market opportunities for our company in the area of
3 residential mortgage loans. I met with clients, I met with
4 potential clients, I met with people at conferences and did
5 conference calls, and I identified opportunities or
6 applications that I felt would be of potential value to the
7 company.

8 As a result I wrote up a proposal for this project.
9 The proposal was accepted by the management committee. When
10 that was done I wrote up a business plan, an explicit
11 business plan for the development of LoanKinetics. That
12 plan defined what needed to get done, what resources needed
13 to be allocated, and how much time I thought it should take
14 at the time.

15 Again, ADCO was a very -- you know, it was a small
16 firm, it only had 20 people, you know, all of us worked on
17 multiple projects. And so resource allocation was always a
18 serious issue and it was very important that I collaborate
19 with the heads of the other groups, including programming,
20 model development, and financial engineering.

21 So I was responsible for all the elements of
22 LoanKinetics from its inception, to its development, to its
23 testing, to its validation, and to its marketing. I put
24 together the marketing material for LoanKinetics, I met with
25 -- I made over 50 presentations on LoanKinetics. And when I

1 left ADCO it was a successful product. We had five clients,
2 one of whom was one of the 20 largest banks in the U.S.

3 The critical factor for LoanKinetics is the integration
4 of key ADCO models into this system, and those models
5 included LoanDynamix, which is a mortgage credit model, and
6 credit option adjusted spread, which is a valuation model.

7 Q And were you involved in the development of those
8 models that are intergraded into LoanKinetics?

9 A No, they were done before I joined ADCO. So
10 LoanDynamix and credit option adjusted spread models were
11 done prior to my joining ADCO in 2009.

12 Q So they were already used and in existence?

13 A They were already used and in existence, yes.

14 Q And did you -- in case I missed it I apologize. When
15 did you join ADCO, what year?

16 A I joined in 2009.

17 Q 2009. And prior to joining ADCO in any of your
18 previous positions at the various institutions and firms
19 that we just saw on the previous slides did you have the
20 opportunity to work with any of the ADCO proprietary models
21 that you just mentioned?

22 A Well I used the prepayment model when I was head of
23 research at UBS. That was a temporary solution. But I knew
24 the people at ADCO for many years. I've known Andy Davidson
25 since 1990, and so I was very familiar with ADCO and its

1 analytics.

2 When I was the credit trader at Vectors Research
3 Management, which is my -- another senior trading position,
4 I traded all securities that were again below triple A and I
5 used the credit model every day, the LoanDynamix model. I
6 started in that trading position in August of 2007,
7 LoanDynamix was developed in 2006.

8 Q So would it be fair to say that you had deep
9 familiarity with LoanDynamix prior to joining ADCO?

10 A Very deep. Again, I used it every day.

11 Q Are you aware that another expert in this case, the
12 plan administrator's expert, Professor Fischel, using
13 LoanDynamix in the context of estimating future losses on
14 the non-liquidated loans that you valued?

15 A Yes, I am aware of that.

16 Q And does Professor Fischel use LoanDynamix for a
17 different purpose than the purpose for which you used it in
18 the context of LoanKinetics in valuing the loans?

19 A No, it's the exactly the same thing. You're
20 forecasting cash flows, and by cash flows I mean principal
21 and interest payments, prepayments, voluntary prepayments
22 again would be refinancing and home sales, or involuntary
23 prepayments, which would be a default, and if there's a
24 default whether there's a loss associated with that default.

25 So Dr. Fischel and I were doing exactly the same thing

1 with LoanDynamix.

2 Q When did you -- what year did you leave ADCO?

3 A I left ADCO September 30th, 2015.

4 Q And why did you leave the company?

5 A Well first of all LoanKinetics had been successfully
6 launched, my children were grown up, and I wanted to semi-
7 retire, I'd been in the business for 28 years, as we all
8 know it's a very high-stress business, and I wanted to semi-
9 retire and move on and do other things.

10 Q And shortly after you retired from ADCO you formed your
11 consulting company and assumed your teaching position at
12 North Carolina University?

13 A North Carolina State, yes, the next year. In February
14 for the company and August I began teaching.

15 Q Dr. Ellson, were you approached by any other party in
16 this proceeding to function as a potential testifying
17 expert?

18 A Yes, I was approached by Compass Lexecon, the
19 individual is Dr. Gerry Lumer.

20 Q And can you tell us about that?

21 A Yes. At the end of the summer of 2016 I was contacted
22 by Dr. Lumer to value or provide an estimated value for
23 20,000 -- approximately 20,000 legacy loans. Legacy loans
24 being loans that were originated prior to the financial
25 crisis, meaning predominantly prior to 2008.

1 THE COURT: Yes, Mr. McCallen?

2 MR. MCCALLEN: I have several objections to this
3 line of questioning and the answers.

4 THE COURT: Okay.

5 MR. MCCALLEN: First of all this is eliciting
6 hearsay, this is -- he's basically repeating statements he
7 received from Dr. Lumer. In effect I can see --

8 THE COURT: Okay. But not it being offered for
9 the truth, right?

10 MR. MCCALLEN: Okay.

11 THE COURT: Okay?

12 MR. MCCALLEN: And beyond that, Your Honor, I
13 think what they're trying to do here is ultimately get at
14 what would be our legal strategy. And so it --

15 THE COURT: Okay. You're going to have to help me
16 out and you're going to also have to tell me whether or not
17 we need to excuse Dr. Ellson for this purpose. Because I
18 hear the words but I don't know what the significance is,
19 those names are meaningless to me. So you might have told
20 me in openings or previously, but I don't know. So if this
21 is a larger conversation you need to tell me.

22 MR. COSENZA: Your Honor, I don't mean to -- I
23 don't have two people speaking at the same time, but I think
24 if we just had a one-minute side bar. I don't want to -- we
25 want things to go quickly here.

1 THE COURT: Okay.

2 MR. COSENZA: I think we can just -- we can keep
3 Dr. Ellson here, I think that probably is the best course of
4 action.

5 THE COURT: Okay. Come on up.

6 MR. COSENZA: Sure.

7 (At sidebar off the record.)

8 THE COURT: Okay, Ms. Black, you can keep going,
9 please.

10 MS. BLACK: Okay.

11 BY MS. BLACK:

12 Q Can you tell us about the conversations that you had
13 with respect to a potential retention and as to which
14 Dr. Lumer contacted you?

15 A Yes. Again, this is the end of the summer, August and
16 September of 2016, I was asked if I was interested in being
17 retained to assess the value of approximately 20,000 legacy
18 loans. Again, legacy loans are those that were originated
19 before the financial crisis. I informed him that I'd be
20 loaning LoanKinetics to value these loans. I was in
21 discussions with Andrew Davidson & Co. or ADCO to insure
22 that there was no conflict of interest in that -- using that
23 model. And then shortly thereafter we were told to stand
24 down -- or I was told to stand down, that there would not be
25 any need for valuing these loans.

1 On March 30th of 2017 I was again contacted by
2 Dr. Lumer for doing exactly the same thing, to be a
3 testifying witness to support the accuracy and reliability
4 of LoanKinetics and to value approximately 20,000 loans
5 using LoanKinetics.

6 By this time I had been contacted by the trustees. And
7 when Dr. Lumer contacted me at the end of the month I was in
8 the process of signing an engagement letter with the
9 trustees.

10 But the roles were exactly the same. To be a
11 testifying witness as to the accuracy and reliability of
12 LoanKinetics and to value the pool of non-liquidated loans.

13 Q Thank you, Dr. Ellson.

14 MS. BLACK: Your Honor, I would like at this point
15 to tender Dr. Ellson as an expert on the valuation of the
16 non-liquidated loans at issue in this matter using the
17 LoanKinetics software.

18 THE COURT: Okay, Mr. McCallen?

19 MR. MCCALLEN: Your Honor, the plan administrator
20 objects, but in light of, you know, Your Honor's comments
21 about the unique nature of this case and given the fact that
22 we don't have all procedures available here under Exhibit G
23 for motions in limine, Daubert motions, et cetera, what we
24 would propose, Your Honor, is that our objection be
25 preserved and the trustees be able to continue with the

1 examination and I'll cross-examine Dr. Ellson and Your Honor
2 can take the testimony for whatever you think is
3 appropriate.

4 THE COURT: Okay. Any objection to that way of
5 proceeding, Ms. Black?

6 MS. BLACK: Well I believe that the other side,
7 the plan administrator had the opportunity to seek to
8 exclude Dr. Ellson prior to this proceeding, they did not do
9 so, they launched pretty heavy allegations with respect to
10 Dr. Ellson's qualifications in their pretrial brief. I'm
11 not sure why we're hearing about this for the first time
12 today.

13 THE COURT: I don't believe that there was any
14 requirement that there be motions in limine or motions to
15 preclude. So we are where we are. If the plan
16 administrator wanted to voir dire Dr. Ellson and seek to
17 object in his qualification they would be permitted to do
18 that.

19 I think it's far more sensible in light of the low
20 probability that I would grant such a motion that the
21 objection be stated, carried, and we just continue to
22 proceed, and I will give the testimony the weight that I
23 believe it deserves. All right?

24 MS. BLACK: Thank you, Your Honor.

25 MR. MCCALLEN: Thank you, Your Honor.

1 BY MS. BLACK:

2 Q Dr. Ellson, I understand you submitted two reports in
3 this matter. For the affirmative report I would like to
4 refer you to the exhibit binder and specifically the
5 documents labelled TRX-640 through 645. Can you please take
6 a look and confirm that this is your affirmative report and
7 the appendices and exhibits thereto.

8 A I can confirm that.

9 Q Thank you. And now with respect to your reply report
10 can you please look at TRX-646 through 648 and confirm
11 whether this is the reply report you submitted in this
12 matter, including the appendices thereto.

13 A That is my reply report.

14 Q Thank you.

15 MS. BLACK: Now, can we have TRDX-326, please.

16 BY MS. BLACK:

17 Q I would like to talk to you about the nature of your
18 engagement. Can you tell us about what your expert mandate
19 in this matter was?

20 A My mandate is to provide an estimated market value for
21 15,739 non-liquidated loans. Again, these are legacy loans
22 originated prior to the financial crisis.

23 Q Thank you.

24 A Using LoanKinetics.

25 Q Thank you.

1 MS. BLACK: Moving onto the next slide, TRDX-327,
2 please.

3 BY MS. BLACK:

4 Q Why is it necessary to use modeling to establish a fair
5 market value for the non-liquidated loans that are at issue
6 here?

7 A Because there's no active market for these loans and
8 there's no pricing available on these loans. I mean this is
9 a very simple diagram, but it shows various markets in the
10 financial world, the commodity markets, there is an active
11 market, there are posted prices, obviously the stock market
12 the same thing holds. And in the residential mortgage-back
13 securities market there is an active market both for legacy
14 residential mortgage-back securities as well as current
15 securitizations. No such thing exists for legacy loans.

16 Q Was there ever a market for legacy loans?

17 A Yes, at the time the loans were originated.

18 Q So prior to the financial crisis?

19 A As they originated there was a market for those loans.

20 Q And I understand that there is an accounting rule that
21 goes to this issue. Can you please elaborate on that.

22 A Yes, it's a very important rule that was issued in 2008
23 by the Financial Accounting Standards Board known as FASB,
24 and the rule is FASB 157.

25 Now, regulated institutions are required to value their

1 assets, all of them, and the problem arises is when there's
2 no market for some of these assets and hence no market
3 price. So FASB came up with three levels of pricing.

4 Level one pricing would be similar to what we have in
5 the commodities stock market and so forth. Prices are
6 known, markets are active, and you know, the prices could be
7 utilized on that basis.

8 Level two pricing is when there's some comparable
9 assets in the market and that could be supplemented by some
10 model analysis.

11 Level three pricing is required when there's no market
12 and no pricing, and it requires the use of models in order
13 to estimate the market value of those assets for which
14 there's no market and no pricing. LoanKinetics fulfills
15 those requirements.

16 Q Thank you. And when did the Financial Accounting
17 Standards Board promulgate FASB 157?

18 A Again, this was done in 2008.

19 Q So was this done in conjunction with the financial
20 crisis?

21 A Absolutely. Yeah, many markets deteriorated during the
22 crisis and this is just one of them.

23 Q Thank you.

24 MS. BLACK: Can we have TRDX-328, please.

25 BY MS. BLACK:

1 Q Now, in very simple terms can you explain how you used
2 modeling to value the non-liquidated loans that are at issue
3 in this matter?

4 A Well fundamentally they're two steps. The first step
5 is to generate the cash flows, and by cash flows I mean they
6 give principal and interest payments, any prepayments, any
7 defaults, and any losses of principal associated with those
8 defaults. That's step one.

9 Step two is to value those cash flows, and that's using
10 proprietary ADCO model called credit option adjusted spread.

11 Now, these two steps might seem very simple,
12 intuitively they are, but you have to understand that we're
13 looking at cash flows monthly to the final maturity of the
14 loan for 15,739 loans, it's a very complex process and
15 requires, you know, literally thousands of lines of code in
16 order to do these steps.

17 Q And just so we are clear, is that done, this process,
18 is it being conducted on a loan level basis?

19 A Absolutely. Every loan has -- cash flows are generated
20 for every loan and there's a value or price assigned to
21 every loan.

22 Q And not to oversimplify, but essentially in the first
23 step you predict how this loan is going to do in the future,
24 in the second step you put a price tag on these cash flows?

25 A That's correct.

1 Q Thank you.

2 MS. BLACK: Can we have TRDX-329, please.

3 BY MS. BLACK:

4 Q I would like you to now explain very briefly again what
5 LoanKinetics is and what it does?

6 A Well it's a multi-functional -- listed here multi-
7 functional residential for a loan application. What that
8 means is that LoanKinetics has four primary functions. It
9 assesses again a mortgage credit, it provides valuation, two
10 other functions are regulatory accounting, which is, you
11 know, creating financial statements, and the fourth function
12 is stress testing, which comes out of the Dodd-Frank
13 legislation as required by the Federal Reserve.

14 LoanKinetics is not a model, it calls models, it
15 communicated with models, if you will, and the two primary
16 models are the LoanDynamix model and the valuation model.

17 In these two steps obviously you can see the
18 performance of the loan over time and you can also, you
19 know, value those cash flows.

20 Q Thank you. Now --

21 THE COURT: When you say you can -- excuse me.

22 MS. BLACK: Go ahead.

23 THE COURT: When you say you can see the
24 performance of the loan over time do you mean you can see a
25 prediction for the performance of the loan over time?

1 THE WITNESS: Yes, Your Honor, that's very true.

2 We're forecasting cash flows.

3 THE COURT: You're forecasting.

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: Okay. Thank you.

6 MS. BLACK: Can we please have TRDX-330.

7 BY MS. BLACK:

8 Q You mentioned the applications of LoanKinetics and I
9 just want to -- and I think you mentioned these four
10 applications -- I just want to make sure that we understand
11 what applications mean. What -- can you explain?

12 A Yeah. They're the four functions of LoanKinetics.
13 Again, one is credit performance of the loan, the forecasted
14 credit performance of the loan. The second is the valuation
15 of those forecasted cash flows. And then the other two
16 functions are regulatory accounting and stress testing.
17 Those two functions are not used in this particular project.

18 Q And again so we're clear, so functions means the
19 purposes for which LoanKinetics can be used?

20 A That's correct.

21 Q Thank you.

22 MS. BLACK: Moving onto TRDX-331.

23 BY MS. BLACK:

24 Q Dr. Ellson, can you please walk us through this diagram
25 and the individual components that are intergraded into

1 LoanKinetics.

2 A Yes. Again, the step one, step two sound, you know,
3 very simplistic. This indicates very well the complexity of
4 LoanKinetics.

5 If you look at the upper left-hand corner we start out
6 with information on each loan. That information is as many
7 as 55 inputs on each loan, and there are loan
8 characteristics, borrower characteristics, and property
9 characteristics. Loan characteristics would be things like
10 what the mortgage rate is, whether it's a fixed rate or
11 adjustable rate mortgage, what the balance is, and most
12 importantly what the loan to value ratio is, and the loan to
13 value ratio is defined by the amount of the loan divided by
14 the value of the property, and this is one of the strongest
15 indicators of default and potential loss.

16 For example, if the loan to value ratio is 50 percent
17 that means the homeowner has 50 percent equity. If the
18 homeowner has LTD of 90 percent the homeowner has 10 percent
19 equity. Clearly in the event of a default the latter loan
20 has considerably more risk.

21 These 55 inputs --

22 THE COURT: Before you move on --

23 THE WITNESS: Yes.

24 THE COURT: -- okay? Because I don't like things
25 simplified, I like to really understand them, okay?

1 THE WITNESS: Yes, Your Honor.

2 THE COURT: So these are inputs going into ADCO.

3 THE WITNESS: Going into the LoanDynamix model.

4 THE COURT: Go into the LoanDynamix model --

5 THE WITNESS: Yes, Your Honor.

6 THE COURT: -- that's going to be used by
7 LoanKinetics.

8 THE WITNESS: It -- LoanKinetics will call the
9 mortgage credit (indiscernible - 36:26).

10 THE COURT: Okay. And so these inputs include the
11 loan to value you just said, right?

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: How does that work? Where is that
14 piece of information that LoanKinetics is grabbing from the
15 servicer information?

16 THE WITNESS: Okay. Well that piece of
17 information is done at origination, that's the original loan
18 to value.

19 THE COURT: It's the original -- so that's the --
20 go ahead.

21 THE WITNESS: I'm sorry, Your Honor.

22 THE COURT: No. So is it the original loan to
23 value?

24 THE WITNESS: No, the original loan to value ratio
25 is updated monthly.

1 THE COURT: Okay.

2 THE WITNESS: Obviously housing prices come into
3 play here.

4 THE COURT: Yes.

5 THE WITNESS: The value of the -- and the loan
6 amortizes. So yes, that loan to value ratio will vary over
7 time depending on those factors.

8 THE COURT: And the servicer is the entity or
9 person that updates the loan to value ratio as the loan goes
10 through its life?

11 THE WITNESS: No, we would update it, but we would
12 update it according to housing prices that have occurred and
13 the servicer would provide the outstanding balance of the
14 loan. ADCO would determine the value of the property as it
15 evolves.

16 THE COURT: And how would it do that?

17 THE WITNESS: It has the housing price forecasting
18 model.

19 THE COURT: Okay. Go ahead, Ms. Black.

20 BY MS. BLACK:

21 Q Okay. Can you continue, please, with I think you were
22 talking about the influence that go into loans and that
23 would be borrow, property, and loan specific inputs that go
24 into LoanDynamix.

25 A Yeah, that's correct. So there are 55 inputs of --

1 characteristics of the loan, there are also market inputs,
2 and those market inputs include housing prices and interest
3 rates.

4 Q And is that what we see at the bottom in the green box
5 where it says macroeconomic assumptions?

6 A That's correct. And the red box it's ADCO's housing
7 price model, and next to that is ADCO's term structure
8 model, which is a forecasted interest rates.

9 Q And so are these ADCO proprietary models?

10 A Yes, they are.

11 Q Essentially everything that we see in the diagram in
12 red are ADCO proprietary models?

13 A That's correct.

14 Q Okay. And let's focus for a little bit on the housing
15 price model that you just mentioned. Where does ADCO take
16 the data from that feeds into the housing price model?

17 A It's taken from data provided by the Federal Housing
18 Authority, that's the regulator for Fannie Mae and Freddie
19 Mac. They provide quarterly data, housing price data for
20 every MSA in the country, and MSA is the metropolitan
21 statistical area, and there are approximately 294 -- about
22 290 of these MSAs in the country.

23 This is extremely important because again housing
24 markets are local, and so you want to get down -- you drill
25 down as much as possible to get at the local housing market.

1 The MSA level is the best that's available.

2 To give you an example during the financial crisis
3 housing prices declined 25 percent approximately nationally,
4 they declined 60 percent in Phoenix, they declined 60
5 percent in Las Vegas, and similar declines were exhibited in
6 parts of California and Florida. Alternatively in Dallas,
7 Texas, for example, the price declines were less than 10
8 percent.

9 So again, it's very, very important to use as much
10 local data as you can to determine the loan to value ratio.

11 Q And have housing prices recovered in all of the
12 metropolitan statistical areas that LoanKinetics -- or sorry
13 -- that LoanDynamix takes into account?

14 A Not every one, no. Again, work has been done by the
15 FHFA, which indicates that there's definitely some markets
16 that are still quote/unquote under water.

17 Q And let's assume that once the loans that you valued,
18 one for 15,739 non-liquidated loans is located in Phoenix,
19 Arizona, what would LoanKinetics via the housing price model
20 take into account for that particular loan?

21 A Well again it would -- it'd take into account the loan
22 characteristics, but it would also take into account the
23 housing price forecast for Phoenix.

24 Q And not nationwide?

25 A Not nationwide, definitely not. The nationwide numbers

1 have no relevance to this project.

2 Q If a user of LoanKinetics disagrees with the
3 macroeconomic assumptions that are being provided by the
4 housing price model and the interest rate model, which is
5 titled term structure model, what are -- what options does
6 the user have?

7 A A user has the option to change those forecasts.

8 Q And did you change those macroeconomic forecasts for
9 purposes of your analysis?

10 A No, I did not. I used the default ADCO forecasts and
11 my understanding is Dr. Fischel did the same thing.

12 Q And why did you think it was appropriate to use the
13 default settings?

14 A I didn't want my personal opinions about the housing
15 market to have any bearing on the estimated value of the
16 loans.

17 Q Same with interest rates?

18 A That's correct.

19 Q Thank you. Now, once LoanDynamix gathers the loan
20 borrower property specific input and the macroeconomic
21 inputs what does LoanDynamix do with this information?

22 A Well again, it generates the cash flows and it
23 forecasts loan performance, and again, loan performance is
24 whether or not the borrower makes a payment, whether the
25 borrower has a voluntary prepayment such as a refinancing or

1 moving, it forecasts delinquencies, and it forecasts
2 defaults. And in the case of defaults it'll also determine
3 whether or not there's a loss associate would that default.

4 Q And how far out does LoanDynamix generate these
5 forecasts?

6 A To the final maturity of the loan. So, for example, if
7 a loan had 20 years left on it it'd be 240 months. And
8 again, that's very important because it points to the fact
9 that we're talking about many months of cash flows that need
10 to be generated for 15,739 loans, it speaks to the
11 complexity that's involved in this process.

12 THE COURT: Can I interrupt and ask a question?
13 I'm trying to figure out how to formulate the question.

14 So experts come in here all the time to tell me
15 about the future, how business is going to perform, what
16 cash flows are going to be, what revenues are going to be,
17 and as a general matter the farther out in time their
18 estimates relate to the less reliable they are. It's hard
19 to believe people when they tell me what's going to happen
20 in ten years.

21 So you're telling me against the backdrop of
22 obviously a tremendous amount of experience that these
23 models can with some degree of reliability predict value
24 over 20 years when life is decidedly unpredictable, right?

25 THE WITNESS: You're correct, Your Honor. I mean

1 I don't know what's going to happen tomorrow, but yes, it's
2 required though that financial institutions --

3 THE COURT: Yes.

4 THE WITNESS: -- value their assets, and yes,
5 these models do forecast out, you know, 10, 20 --

6 THE COURT: Right.

7 THE WITNESS: -- even 30 years.

8 THE COURT: Right.

9 THE WITNESS: And the importance is that the
10 modeling process itself is consistent and reliable, and that
11 basically gives you what's known as a base case forecast,
12 that's your expected outcome.

13 THE COURT: Uh-huh.

14 THE WITNESS: And then you run various scenarios
15 in addition to that base case to come up with an estimated
16 market value.

17 So you're absolutely right, Your Honor, nobody
18 knows the future and the farther out you go the less
19 reliable.

20 THE COURT: I mean we could be -- in 6 months the
21 Dow could be at 30 or the Dow could be at 20.

22 THE WITNESS: Exactly. Exactly. I mean --

23 THE COURT: We all know what we hope. Well I
24 don't -- that's --

25 (Laughter)

1 THE COURT: So I'll leave it at that before we get
2 too far into that. But thank you, I understand what you're
3 saying about -- certainly about the requirements of
4 financial accounting, and I appreciate your answer to my
5 question.

6 THE WITNESS: Thank you.

7 BY MS. BLACK:

8 Q On that point though because the Court just raised an
9 interesting point. So does LoanKinetics via the various
10 models that it calls on factor in extreme economic
11 conditions, does it stress test for these unlikely economic
12 conditions?

13 A Yes, it very much does. It's a process that we have
14 embedded in LoanDynamix where we have the base case model
15 forecast and then we run a series of pessimistic scenarios
16 against that, and we run a series of optimistic forecasts
17 against that. And so each of these scenarios has a
18 likelihood of occurring or a probability associated with it,
19 and so you come up with a cumulative result based on that.

20 Q Okay. So moving onto now LoanDynamix generates the
21 output and forecasts month by month by month for each loan,
22 how it's predicted to perform up until maturity. That
23 information, according to the diagram, is being fed into
24 credit option adjusted spread, which you explained earlier
25 is the model that puts on the price tag, if you will. What

1 does credit option adjusted spread do?

2 A Again it generates a price for giving the assumptions
3 and the output from LoanDynamix.

4 Now, one of the critical factors here is again there's
5 no market, there's no market pricing so how do you get a
6 benchmark value that you can use to price the loans? And my
7 design was that you'd use legacy mortgage-back securities in
8 order to price legacy residential loans, and that's a
9 critical relationship, and in effect it's a mapping of value
10 of residential mortgage-back securities that were originated
11 -- or securitized at the same time as these legacy loans
12 were originated, and that value is fed into the credit
13 option adjusted spread model, and that results in a price
14 for every loan.

15 Q So you're essentially comparing the loans to
16 securitizations that hold comparable loans?

17 A Very much so. The collateral of the underlying loans
18 in the NLL pool are very comparable to the securitizations
19 that occurred prior to the prices. The loans were
20 originated at the same time.

21 Q And again, are you doing that because securitizations
22 for the comparable loans are the closest financial product
23 that is out there that you can use to infer market pricing?

24 A That's correct.

25 Q Okay. So then what does credit option adjusted spread

1 do and how do we get to the top box here in this diagram?

2 THE COURT: Can I stop and ask another question?

3 MS. BLACK: Uh-huh.

4 THE COURT: So when you're looking at the prices
5 from the securities market are you looking at it on a
6 tranche basis? These securitizations have different
7 priorities, waterfalls, tranches. So -- and the pricing of
8 different slices of them is going to be different. So the
9 loan --

10 THE WITNESS: That's correct.

11 THE COURT: -- is in there, it's in the pool with
12 hundreds and thousands of others, so I'm just a little
13 confused about how you relate a particular loan which is in
14 a bigger pool and that pool -- the securities related to
15 that trust that holds that pool of loans is trading. Do you
16 understand my question?

17 THE WITNESS: Yes, Your Honor, I do.

18 THE COURT: Can you help me out?

19 THE WITNESS: So first of all in the legacy
20 mortgage-back security markets you can basically generalize
21 a little bit and state that there are three classes of
22 securities. One would be senior, those would be rated
23 triple A, and again mezzanine as I pointed out would be
24 double A down to triple B, they're investment grade and the
25 lower down you go of course the more risk.

1 THE COURT: Right.

2 THE WITNESS: And then below triple B would be the
3 subordinate tranches which are very risky and -- well even
4 including the first loss piece. So you have these three
5 classes, if you will, of securities --

6 THE COURT: Right.

7 THE WITNESS: -- and there's pricing available for
8 them.

9 THE COURT: Okay.

10 THE WITNESS: And you know, ADCO has calculated
11 prices and they use over 100 securities in their sample to
12 generate values. Now how does this map to the loans?

13 THE COURT: Yes.

14 THE WITNESS: Well again, what you want to do is
15 try to match up the loan characteristics to the securities.
16 And so within LoanDynamix each loan is divided into three
17 risk categories. A senior component, a mezzanine component,
18 and a subordinate company. The senior component is defined
19 as having no more than one-half of one percent likelihood of
20 loss. A mezzanine tranche -- or mezzanine component of the
21 loan would be 95 percent probability of loss. And the
22 subordinates of course are the first loss piece. By doing
23 this you can map the securities market to the loan market,
24 and that's what was done.

25 THE COURT: Thank you.

1 BY MS. BLACK:

2 Q And in fact I think there's a fancy word for that
3 within ADCO, it's called virtual securitization?

4 A That's correct.

5 Q Now, I believe you mentioned earlier that the
6 individual models which we see here, those are the various
7 figures that are in red, that LoanKinetics calls upon were
8 in existence, they were created before you joined the
9 company?

10 A That's correct.

11 Q And what's the basis for you being comfortable that
12 these models are reliable?

13 A Well I used LoanDynamix again in my capacity as the
14 credit trader at the hedge fund Vectors Research Management,
15 and I used it ever day, so I was certainly well familiar
16 with that.

17 The credit option adjusted spread is a procedure that's
18 used throughout analytics from both the buy side and the
19 sell side, it's quite commonly used.

20 And furthermore, again, I previously worked with, I
21 knew the people that developed these models, so I was very
22 comfortable in using them and incorporating them into
23 LoanKinetics.

24 Q But you personally were not involved in their
25 development, testing, and validation, correct?

1 A That's correct.

2 Q And that's because that was all done before you ever
3 joined ADCO?

4 A That's correct.

5 Q Okay. Now, with respect to LoanKinetics, which is your
6 brain child, if you will, throughout the course of this
7 proceeding the plan administrator has made the suggestion
8 that LoanKinetics was never properly validated by running it
9 against the historical performance of loans to see how the
10 predictions generated by LoanKinetics match up to what
11 happens in the real world. Is there any truth to this
12 suggestion?

13 A No, because LoanKinetics is not a model, it takes
14 output from the models, it takes the cash flows from
15 LoanDynamix, it takes the valuations from the option
16 adjusted spread model and it creates reports and analytics
17 that are demanded by the clients. So it is not a model.
18 All the testing against, you know, back testing, historical
19 testing, forecasting, that was all done prior to my joining
20 ADCO, and the model validation was done prior to my joining
21 ADCO.

22 Now, validation of LoanKinetics is very critical
23 because again you have all of these cash flows and you have
24 to ensure that they match up dollar for dollar for the
25 output that's coming out of the models. And that's the

1 validation of LoanKinetics, it's not real world losses or
2 whatever, that's done within LoanDynamix. And again,
3 LoanKinetics is not a model, it's an executable, it
4 communicates with models, and hence the critical factor for
5 validating LoanKinetics is that there's no error in these
6 cash flows being generated to the dollar.

7 Q And was that done under your supervision?

8 A Yes, it was.

9 Q And was LoanKinetics validated prior to its release to
10 clients in 2014?

11 A Yes, it was.

12 Q Okay. And were you the person who did the validation
13 directly?

14 A No, I was not. In fact it's very important to have
15 independent validation of any model.

16 Q So I guess my next question then is who did the
17 validation of LoanKinetics?

18 A Well there was a person within ADCO that did that.

19 Q And is that someone that you supervised?

20 A He was in my group, yes.

21 THE COURT: So when you say independent validation
22 of the model you don't mean that because LoanKinetics is not
23 a model.

24 THE WITNESS: That's correct.

25 THE COURT: Okay.

1 THE WITNESS: We continually conflate this. It's
2 not a model. It's the validation of LoanKinetics --

3 THE WITNESS: The validation of LoanKinetics. And
4 the validation of LoanKinetics involved basically verifying
5 that the operation of ADCO and the other one -- the --

6 THE WITNESS: Right.

7 THE COURT: -- right, worked as they were supposed
8 to work? I don't understand what the validation of loan --
9 of what comprised the validation of LoanKinetics.

10 THE WITNESS: Well it validates all the cash flows
11 and valuations that come out of the models, and it's very --

12 THE COURT: How does it do that though?

13 THE WITNESS: It's very important to understand
14 that, you know, you have to make sure that if LoanDynamix is
15 used within LoanKinetics that it calls exactly the same data
16 libraries, it matches up exactly by dates, and that all the
17 numbers are exact. And I'll give you an --

18 THE COURT: But here's what I don't understand.
19 The numbers are exact to what?

20 THE WITNESS: Well again they're exact whether or
21 not you use LoanDynamix within LoanKinetics or external to
22 LoanKinetics.

23 THE COURT: Do you mean -- I'm still struggling.
24 Do you mean that the numbers that ADCO is using are the same
25 numbers, there aren't mistakes in the LTV that's being

1 dropped down into ADCO from whence it came? Is that what
2 you mean?

3 THE WITNESS: That would be part of it. But
4 again, what you're validating is that the cash flow is
5 generated out of LoanDynamix either externally or within
6 LoanKinetics are exactly the same. That's the critical
7 factor. They have to match up dollar for dollar.

8 THE COURT: I'm going to try one more time and
9 then I'm going to let you go on. Matching up means you're
10 comparing one thing to another. What are the two things
11 that I'm comparing to see are the same?

12 THE WITNESS: You're comparing LoanDynamix outside
13 of LoanKinetics and you're comparing LoanDynamix within
14 LoanKinetics.

15 THE COURT: And those are two different things?

16 THE WITNESS: They can be if you're not careful.
17 If your code is not correct there could certainly be --

18 THE COURT: Okay.

19 THE WITNESS: -- significant errors that are
20 reached. And it's critical that this be done.

21 For example, again, I mentioned, you know, the
22 first client being a top 20 bank, they relied on
23 LoanKinetics exclusively for their analysis of residential
24 loans. In their risk management, in their trading, in their
25 regulatory accounting financial statements, and stress

1 testing exclusively.

2 It's important I think maybe to view it this way.
3 If I was using LoanKinetics and they were using LoanKinetics
4 and we were looking at the same loan pool we'd get exactly
5 the same numbers to the dollar. And it took quite a bit of
6 time to integrate LoanKinetics into that bank system.

7 THE COURT: Okay. Thank you. Thank you for your
8 patience. I understand.

9 THE WITNESS: Thank you.

10 BY MS. BLACK:

11 Q Just to follow up on this. So LoanDynamix -- the
12 LoanDynamix model, which is the credit performance model
13 that generates the estimated future cash flows, can be used
14 as a stand-alone outside of LoanKinetics, correct?

15 A That's correct. There are some, you know, 20 to 25
16 clients that were using LoanDynamix independently.

17 Q And so that's what Professor Fischel did, for instance,
18 he used LoanDynamix outside of LoanKinetics?

19 A That's correct.

20 Q Okay. But whether as a stand-alone outside of
21 LoanKinetics or within LoanKinetics LoanDynamix performs the
22 same function?

23 A It performs the same function and if it has the same
24 loans then Dr. Fischel's forecasted cash flows should be
25 exactly the same as mine.

1 Q So would it be fair to say that one thing that you look
2 to when you validate LoanKinetics as a system since it calls
3 on all of these various models and integrates them and they
4 are communicating with each other is to make sure that
5 whatever goes in and whatever goes out matches to what these
6 individual models would produce or generate if they were
7 taken outside of LoanKinetics as a stand-alone?

8 MR. MCCALLEN: Objection, Your Honor, leading.

9 THE COURT: You can answer, Dr. Ellson.

10 THE WITNESS: That is correct.

11 MS. BLACK: I hope that this might have clarified
12 a little bit what the Court was asking about before.

13 THE COURT: We have been going for about an hour,
14 so any time you think would be a good time for a break.

15 MS. BLACK: Sure.

16 THE COURT: Okay.

17 MS. BLACK: This is a good time.

18 THE COURT: All right. We'll take about ten
19 minutes.

20 Dr. Ellson while you're with us you remain under
21 oath, please do not discuss the case or your testimony with
22 anyone or be in anyone's presence while they're doing the
23 same.

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: All right? Thank you.

1 (Recessed at 11:07 a.m.; reconvened at 11:23 a.m.)

2 THE COURT: Please be seated. Okay. Let's keep
3 going.

4 MS. BLACK: Can we have TRDX-335, please.

5 BY MS. BLACK:

6 Q Dr. Ellson, I would now like to go over the opinions
7 that you have formed in this matter. Can you please walk
8 the Court through the summary of your opinions. I think the
9 first one we covered pretty extensively already, so why
10 don't you start with the second bullet.

11 A Yes. LoanKinetics is reliable. Hundreds of thousands
12 of loans were run through LoanKinetics during its
13 development. Again, there are dozens of various types of
14 residential mortgages. These mortgages were originated at a
15 variety of different points in origination. Sometimes the
16 underwriting standards were very strong, sometimes they were
17 very weak. LoanKinetics evaluated all types of loans over
18 all the periods that are relevant.

19 Q Thank you. Moving onto the third bullet, what can you
20 tell us about it?

21 A I estimated the market value of the 15,739 loans NLL to
22 be \$3,018,000,000. Again, this is a weighted average price,
23 each loan has a price, the price is weighted by the balance
24 of each loan, and the total comes to \$3,018,000,000.

25 Q Thank you.

1 MS. BLACK: And if we could just pull up TRDX-336
2 real quickly.

3 BY MS. BLACK:

4 Q Dr. Ellson, do you recognize this spreadsheet, and what
5 do you recognize it to be?

6 A Yes, this is the spreadsheet that sums up the estimated
7 market values for each loan, and again, you see the total
8 sum being the 3,018,000,000.

9 Q Is this an exhibit or appendix to any of your reports?

10 A Yes, it's in my affirmative report.

11 Q And so did you calculate the estimated market value for
12 each loan individually?

13 A Every loan, 15,739.

14 Q Thank you.

15 MS. BLACK: Going back to TRDX-335, please.

16 BY MS. BLACK:

17 Q Moving onto the fourth bullet can you explain this,
18 please.

19 A Yes, the average estimated value or price for each loan
20 was 72 percent of par. That means, for example, for a loan
21 that was \$100,000 the loan would be valued at \$72,000. The
22 reason for this is the expectation of losses on these loans.

23 Q And was every single loan among the 15,739 that you
24 valued at 72 percent of par?

25 A No, of course not. There are a significant number

1 below 72 and a significant number above, that's the nature
2 of calculating an average.

3 Q So 72 is just the weighted average?

4 A It's the weighted average, that's correct.

5 Q Okay. And moving onto the next bullet?

6 A Yes, 72 percent of par does indicate significant losses
7 in the pool. I think it's important to recognize that 50
8 percent -- or almost 50 percent of the pool are subprime
9 borrowers, these are the weakest borrowers in the housing
10 market, 40 percent are what's known as all day loans, which
11 is really an amorphous category, basically filling the gap
12 between prime loans and subprime loans, and most importantly
13 prime loans only consist of 8 percent of the NLL. And so
14 it's the weakest loans that drive the results that I
15 achieved.

16 Q Okay. And let's actually look at the distribution.

17 MS. BLACK: Can we please have TRDX-337.

18 BY MS. BLACK:

19 Q Dr. Ellson, do you recognize this table?

20 A Yes, I do.

21 Q What is it?

22 A Well it's a summary of the loan types, the balances,
23 the number of loans, and the average price for each of the
24 prime major categories. And again, you can see that the
25 average price across all the loans is 72.07, subprime loans

1 are less than that figure at 70.9, all day loans at 70.69.
2 The prime loans are significantly higher, 84.8, but again,
3 prime loans are a small percentage of the NLL, and any type
4 of loan including prime has the probability of some loss.

5 Q And again is the -- does every single loan within the
6 prime category, for instance, have a price of 84.8 or is
7 this again the average across the category?

8 A It's the weighted average across the category.

9 Q So some of the non-liquidated loans that you valued
10 have an average price that is higher than 84.8?

11 A Oh, yes, definitely.

12 Q And the flip side of it some of the non-liquidated
13 loans that you valued have an average price that is lower
14 than, for instance, what we see here for subprime loans?

15 A That's correct.

16 Q And again, is there any logic to why the average price
17 for the prime loans is higher than for -- subprime all day?

18 A Yes, it's because they're better loans. But again, all
19 loans carry some degree of risk in terms of loss, but
20 certainly the better quality loans would be prime.

21 Q Is it possible that on certain loans -- that certain of
22 the loans that you valued using LoanKinetics are going to
23 perform better in the future than what LoanKinetics
24 predicted?

25 A Well any particular loan would probably be predicted an

1 error. As we discussed 1 loan out of 15,739, that's not the
2 point of evaluating and valuing this pool. One loan is very
3 unlikely to perform as indicated by LoanDynamix or the
4 credit option adjusted spread model.

5 Q So my question is, is it possible that the loans are
6 going -- some loans are going to perform better whereas
7 others are going to perform worse?

8 A That's correct.

9 Q Okay.

10 MS. BLACK: Moving onto the next slide, TRDX-338,
11 please.

12 BY MS. BLACK:

13 Q The plan administrator and its expert, Mr. Castro, take
14 the position that inclusion of the non-liquidated loans and
15 the repurchase mechanism is inappropriate because these
16 loans have been performing for years and are providing value
17 to investors and also that it's a virtual certainty that
18 they will not result in any losses to investors. I
19 understand that you have addressed that point in your reply
20 report. Can you please walk us through it.

21 A Yes. So first of all the vast majority of the loans in
22 the NLL are referred to as reperforming or modified. In
23 fact 88 percent of the loans are done so. That means that
24 they had significant issues historically and the terms of
25 the loans were changed in order to presumably assist the

1 borrower with his ability -- his or her abilities to pay the
2 mortgage.

3 It's also important to recognize --

4 THE COURT: Can I stop you, Dr. Ellson? You said
5 presumably because you don't know, right? You don't know
6 why there was a modification.

7 THE WITNESS: Well there's a number of reasons
8 why, but usually there's a default issue.

9 THE COURT: Okay. But I am asking you, this is a
10 model, right?

11 THE WITNESS: No, these are actual loans.

12 THE COURT: Yeah -- no, I understand that. But
13 there is -- as you sit here today you don't know directly in
14 terms of direct access to any particular datum whether a
15 particular -- why a particular loan was modified, whether it
16 was in default or not.

17 THE WITNESS: That's correct.

18 THE COURT: Thank you.

19 BY MS. BLACK:

20 Q Please continue, Dr. Ellson.

21 A Again, the idea that there have been no losses is
22 totally incorrect. For example, 2,640 loans in the NLL
23 pool, the modification had to do with principal reduction,
24 those are losses that will never be recouped by investors.
25 And it's also important to recognize that the performance

1 currently of this pool is quite weak. There's -- as we'll
2 get into more detail later, but there's a significant number
3 of loans that are currently in foreclosure or REO, which is
4 real estate owned, that's when the lender takes possession
5 of the property. There's a significant delinquency
6 pipeline. And again, this is a very weak credit pool.

7 Q And what is the credit risk? In other words, what is
8 the risk of loss -- future loss associated with loans that
9 have this type of modification and delinquency history?

10 A It's significant. And again, loans that have been
11 modified, even if they're current, have a higher probability
12 of loss.

13 And I think I'd like to point out towards the end there
14 there's the statement performing loans would never be
15 subject to repurchased claims because they're actively
16 providing value. Well they might be providing value but
17 they might not provide full value.

18 THE COURT: Mr. McCallen?

19 MR. MCCALLEN: Yes, Your Honor. We have an
20 objection to this line of questioning. The trustees have
21 sought to qualify Dr. Ellson as an expert on the topic of
22 the valuation of the non-liquidated loans using
23 LoanKinetics.

24 THE COURT: Yes.

25 MR. MCCALLEN: And this line of examination is

1 veering well outside of that and getting into Dr. Ellson's
2 views, his -- based on presumably his experience about these
3 types of loans generally and what kind of credit they are
4 and what kind of risk they pose.

5 That's not something that LoanKinetics quantified
6 in connection with his report, it's not something that falls
7 within the scope of his testimony, and so it's both a new
8 opinion and outside the scope of his testimony, Your Honor.

9 THE COURT: Okay. Ms. Black?

10 MS. BLACK: Dr. Ellson sets this very opinion for
11 in his reply report.

12 THE COURT: Can I see where, please.

13 MS. BLACK: Sure. If you turn to TRX-646.

14 THE COURT: Okay.

15 MS. BLACK: And in particular we are looking at
16 paragraphs 22 through 27 of his reply report. And if you
17 want you can just focus on --

18 THE COURT: If you could just give --

19 MS. BLACK: -- paragraph 23 right now.

20 THE COURT: On paragraph 23?

21 MS. BLACK: Uh-huh.

22 THE COURT: Okay. If you would give me a moment.

23 (Pause)

24 THE COURT: Okay. Mr. McCallen?

25 MR. MCCALLEN: Yes, Your Honor.

1 THE COURT: it is in the reply report.

2 MR. MCCALLEN: Absolutely. So with respect to the
3 objection about it being new reading this I will stand
4 corrected.

5 THE COURT: Okay.

6 MR. MCCALLEN: But the objection with respect to
7 the scope of the -- his testimony remains, Your Honor.
8 Because as I said, the grounds upon which they're seeking to
9 qualify him is solely for valuing these loans using
10 LoanKinetics.

11 THE COURT: Right.

12 MR. MCCALLEN: The fact that -- the reason why
13 this is in here really goes to the dual roles that
14 Mr. Castro is playing in the case because he's giving AMA
15 opinions and he also puts certain criticisms in his report
16 related to LoanKinetics.

17 So the fact that Dr. Ellson chose to respond to
18 things that Mr. Castro said that veered outside of
19 Dr. Ellson's expertise and put it in his report that doesn't
20 mean that it now falls within his area of expertise.

21 So the reason why this is in here and in his
22 report and he's responding to it is that he was responding
23 to parts of what Mr. Castro was saying, but it doesn't
24 change the fact that Dr. Ellson's views as to the credit
25 risk proposed by modified loans is just simply outside of

1 the scope of his proffered expert testimony.

2 THE COURT: Well I'm going to -- as my former
3 colleague, Judge Grover would say, slice it and dice it a
4 little bit.

5 Because I think that to the extent that Dr. Ellson
6 identifies facts from the remittance reports about current
7 delinquencies and the like I don't have a problem with that.

8 Where it begins to get a little more murky are
9 these blue bullets on TRDX-338 where Dr. Ellson is offering
10 what I would describe as qualitative views as to certain
11 attributes of non-performing loans and also certain opinions
12 about the affect of the loan modifications, et cetera.

13 So that's the way I'm going to respond to your
14 objection.

15 MR. MCCALLEN: Thank you, Your Honor.

16 THE COURT: I don't know if you can navigate that,
17 but that's my view. You follow, Ms. Black?

18 MS. BLACK: Yes. All I'm trying to get at is why
19 Dr. Ellson believes that 72 percent as a weighted average
20 for this particular population of loans is not unreasonable.

21 THE COURT: Right. And what I'm saying is that to
22 the extent that he is citing to statistical data and/or
23 statistics that he has access to as part of employing
24 LoanKinetics that's fine. It's not fine for him to draw on
25 his obviously vast expertise in the mortgage-back securities

1 industry in order to embellish the conclusion as to the way
2 these loans may or may not act and may or may not affect
3 value.

4 MS. BLACK: Okay. I think I may cure it by just
5 -- the issue by pulling up the next slide --

6 THE COURT: Okay.

7 MS. BLACK: -- which is an analysis submitted with
8 his reply report and having him testify to that.

9 THE COURT: Okay. Fair enough.

10 MS. BLACK: Can we TRDX-339, please.

11 BY MS. BLACK:

12 Q Dr. Ellson, can you please tell us what this series of
13 table is and what the significance of these numbers is?

14 A Well they're very significant because they demonstrate
15 what the performance of the non-liquidated loans has been,
16 and again, the top table is very important, it shows that
17 over 10 percent of the non-liquidated loans are currently in
18 REO and foreclosure, it's very likely that those loans would
19 sever losses, because when a homeowner is in default it's
20 very much going to be -- or very likely to be a distressed
21 sale. Homeowners in default do not maintain their
22 properties, in fact they often strip their properties.

23 There's also a significant delinquency pipeline that
24 exceeds 10 percent. Default pipeline -- at least some of
25 that default pipeline will end up in REO and foreclosure.

1 And there's only been 62 percent that have been current for
2 the past year. That doesn't suggest that they've been
3 current beyond for the year.

4 In table two --

5 MR. MCCALLEN: Your Honor, we're going to make the
6 same objection again. Obviously this is something that was
7 in his reply report, but again, you know, Dr. Ellson is
8 looking generally speaking at issues related to the
9 performance of the loans and it's outside of actually his
10 proffered expert testimony, which is the use of the
11 LoanKinetics software.

12 MS. BLACK: May I respond?

13 THE COURT: Hold on just a second.

14 (Pause)

15 THE COURT: Dr. Ellson, how did you access this
16 data?

17 THE WITNESS: It was taken from the servicer
18 reports, Your Honor.

19 THE COURT: Was it taken from the servicer reports
20 as they were available -- as they were made available to you
21 for input into ADCO/LoanKinetics?

22 THE WITNESS: That's correct, Your Honor.
23 Historical performance data --

24 THE COURT: Right.

25 THE WITNESS: -- of every loan does go into

1 LoanDynamix and hence LoanKinetics.

2 THE COURT: Okay. Mr. McCallen, I'm going to
3 stand by my prior stratification of this issue. This is
4 data, it is what it is. Unless you believe that there's an
5 error in the reflection of the data I'm going to let
6 Dr. Ellson testify about it.

7 MR. MCCALLEN: Thank you, Your Honor.

8 THE COURT: All right? Go ahead.

9 BY MS. BLACK:

10 Q Please continue.

11 A On table number 2 it just again gives a little bit more
12 information, in particular when serious delinquencies occur.
13 Obviously when delinquencies start they become more serious
14 over time, and 7,378 loans had been serious by delinquent
15 within 36 months.

16 The fourth table is again particularly important, it
17 demonstrates that 88 percent of the loans had been modified,
18 that's a very high number.

19 Again, within LoanDynamix loans that had been modified
20 even if they're current are referred to as blemished current
21 because in the statistical analysis that was done blemished
22 current loans have a higher probability of default and loss
23 than ones that weren't modified.

24 And then finally we go to modification information.
25 The most common is some adjustment to the mortgage rate

1 being paid at either reduced or it was changed from a
2 floating rate adjustable mortgage to fixed rate.

3 Extremely important here is the fact that there's a
4 principal balance reduction for 2,640 loans, that again is
5 an actual loss to investors, that's not going to be
6 recouped.

7 Q And again, when you had mentioned earlier today that
8 there are 55 inputs that are -- that go into LoanDynamix so
9 that LoanDynamix can perform its magic and generate the
10 future cash flows, is the data that we have seen on these
11 tables among the inputs that are being fed into LoanDynamix?

12 A Very much so. Delinquency history is one of the key
13 inputs to LoanDynamix.

14 Q And how does the fact that -- how does the status of
15 the non-liquidated loans as well as the history of
16 modifications and delinquencies factor into your opinion
17 that 72 percent of par value across the 15,739 non-
18 liquidated loans is a reasonable number for LoanKinetics to
19 have (indiscernible - 1:20:24) that?

20 A Well it's reasonable from several different
21 perspectives. Again, 88 percent of the loans had been
22 modified, there's a significant foreclosure REO pipeline
23 exceeding 10 percent, there will be extraordinary likelihood
24 there'll be losses experienced there, and then there's also
25 a delinquency pipeline exceeding 10 percent, and a

1 significant number of those loans will enter into
2 foreclosure REO.

3 Q And in light of that is it your opinion that 72 percent
4 weighted average across the pool of loans that we're dealing
5 with here is reasonable?

6 A Yes, I do.

7 THE COURT: Mr. McCallen?

8 MR. MCCALLEN: So objection, Your Honor, on this.
9 It's -- so Dr. Ellson has -- we'll get into this on cross-
10 examination -- Dr. Ellson has run LoanKinetics and that's
11 provided a value for these loans which the trustees is
12 offering in this case, and that is the subject matter of his
13 report, that is what his testimony is being offered.

14 Now he's coming in and offering testimony looking
15 at other information that he sees in the marketplace and
16 using that to try to support the reliability and explain why
17 he thinks LoanKinetics is reliable, and that's -- now he is
18 sort of putting on both hats. He is wearing a hat as the
19 person who says he's the brain child of LoanKinetics and
20 he's here to explain how it works, and now he's coming in
21 and saying I have industry experience and I'm looking at all
22 of these different variables such as, you know, performance
23 of the modified loans and looking at the indicators, and
24 this tells me that this number that LoanKinetics gives me is
25 reliable, and he just has not been qualified to testify in

1 this court to Your Honor about why the number that's been
2 generated by LoanKinetics is something that the Court can
3 rely upon.

4 THE COURT: Time out. Dr. Ellson, how'd you like
5 to take a walk down the hall?

6 THE WITNESS: Yes. Certainly.

7 THE COURT: All right? Just give us a couple
8 minutes. It's easier to do this without having to be up at
9 the bench. Someone will come and get you, sir, in about
10 five minutes. Yes, please.

11 (Witness leaves room)

12 THE COURT: Here's what I don't understand.

13 MR. MCCALLEN: Uh-huh.

14 THE COURT: The trustees are presenting him as an
15 expert.

16 MR. MCCALLEN: Uh-huh.

17 THE COURT: Right? On -- for the valuation of the
18 non-liquidated loans. He has a non-model. He has a
19 structure that's not a model --

20 MR. MCCALLEN: Assist in the calls on models.

21 THE COURT: Assist in the calls on models. Thank
22 you. And you've attacked it --

23 MR. MCCALLEN: Uh-huh.

24 THE COURT: -- and you said it's not -- the number
25 that he has generated is not a good number, and one of the

1 ways that he is now defending his number is by saying, okay,
2 well here's the number that my system that calls on models
3 generated and here are other things that I'm looking at to
4 reassure myself that my system that calls on these models
5 isn't completely out of whack.

6 So why isn't that exactly what -- I don't know if
7 this is what you were going to say, Ms. Black --

8 MS. BLACK: I could not have phrased it any
9 better.

10 (Laughter)

11 THE COURT: That's nice of you to say that, but I
12 think that you could.

13 But why isn't that exactly this is what you do
14 when you have an expert who gets attacked and then you say,
15 okay, I'll tell you six reasons why what I did is right?
16 And as the architect of LoanKinetics he testified
17 extensively to the process that he went through in order to
18 put it out as a product.

19 So if you on cross-examination want to go into
20 that with him, the how do you know aspect of it, or if you
21 want to, as I'm sure you will, point out the discrepancies
22 between what the model predict and what happened in reality,
23 because we have the -- you know, we have the time frame
24 issue here where you could do that, that's for cross-
25 examination. I just don't understand why -- how I can cut

1 off -- cut this off wholesale.

2 MR. MCCALLEN: Fair enough, Your Honor. And I
3 don't want to belabor the point and I recognize we want to
4 get through this efficiently.

5 What's happening here is there's through the
6 course of the examination today there's been a slow creep in
7 terms of the scope of Dr. Ellson's testimony. When you read
8 his report and take his deposition --

9 THE COURT: Uh-huh.

10 MR. MCCALLEN: -- as I did, it's very clear that
11 he's the person who, as he had said, you know, came up with
12 the idea and marketed it --

13 THE COURT: Uh-huh.

14 MR. MCCALLEN: -- and went around and sold it to
15 people and pitched it and all of that.

16 THE COURT: Uh-huh.

17 MR. MCCALLEN: He's not the guy who modeled it,
18 didn't put it together --

19 THE COURT: Uh-huh.

20 MR. MCCALLEN: -- and he doesn't really have an
21 understanding as -- I think Ms. Black already elicited
22 testimony that he wasn't involved in the testing or the
23 validation of LoanKinetics in any way. So it's something he
24 oversaw but he didn't see it.

25 THE COURT: Do you mean LoanKinetics --

1 MR. MCCALLEN: I'm sorry.

2 THE COURT: -- or do you mean LoanDynamix?

3 MR. MCCALLEN: I made --

4 THE COURT: You mean loan --

5 MR. MCCALLEN: -- the same mistake. The models --
6 he wasn't involved in the testing or validation --

7 THE COURT: Of the underlying models.

8 MR. MCCALLEN: -- of the models that --

9 THE COURT: Right.

10 MR. MCCALLEN: -- LoanKinetics calls upon.

11 And so his report -- and this is one of the
12 reasons why we don't think ultimately his testimony is
13 admissible -- because what he's actually doing is he runs
14 LoanKinetics and gives us the number, right?

15 THE COURT: Yes.

16 MR. MCCALLEN: And then his report basically
17 explains here's how LoanKinetics works.

18 THE COURT: Right.

19 MR. MCCALLEN: And that was the scope of his
20 report.

21 Now we come in here and the first issue that
22 starts happening, and the objection I made was he starts
23 opining upon risk of loss and basically saying that there's
24 -- he's looking out there and seeing, you know, the
25 likelihood that a loan is going to suffer a loss based on

1 the fact of all these different variables and it's not
2 something that he -- it's not within his expertise there.
3 And now he's coming in and basically --

4 THE COURT: But he -- those answers were in
5 response some to my questions and some to Ms. Black's
6 questions in order to explain how the models, including
7 LoanDynamix, work. Because it's all well and good to say
8 there are these 55 inputs, you know, you put all these
9 ingredients in and the sausage comes out, and his answers
10 were to explain what he's talking about, because otherwise
11 it's just a black box.

12 And my view is, and I think we ought to move it
13 along, is that in large measure, not in every one, and I
14 tried to identify some areas in which I think he is getting
15 too broad a brush and calling on his general expertise, in
16 large measure I think the answers are to illuminate exactly
17 what's in the black box. For example, the answer he gave
18 with respect to how you map loans to the price of mortgage-
19 back securities, because that was very obtuse until he
20 explained it. So he understands how you bucket the loans
21 into the three different classes, et cetera. I don't think
22 that's outside the scope of what he should be able to
23 explain.

24 MR. MCCALLEN: And the plan administrator agrees
25 with that.

1 THE COURT: Okay. So I think the long and the
2 short of it is that you can have as much fun as you like on
3 cross-examination, but we ought to let him keep going.

4 MR. MCCALLEN: Thank you, Your Honor.

5 THE COURT: All right?

6 All right. So I have a sense that probably
7 partially due to my fault we're moving more slowly than you
8 anticipated because I asked a number of questions, but this
9 is --

10 MS. BLACK: But they were all good. They were all
11 good questions.

12 (Laughter)

13 THE COURT: You do not have to -- those are the
14 lines that --

15 MS. BLACK: He taught me well.

16 THE COURT: I guess I'm a little bit gun shy after
17 things that have happened about not stressing witnesses too
18 much. What shall we plan to do? Keep going for now? Do
19 you want to talk to your friends over there?

20 MR. MCCALLEN: How much more do you have?

21 MS. BLACK: I would like to get through this --
22 the rest of my direct as quickly as possible.

23 THE COURT: Okay. Best guess?

24 MS. BLACK: Fifteen to 20 minutes tops.

25 THE COURT: Oh, wonderful. Okay. If you would --

1 if someone would go get Dr. Ellson that would be great.

2 (Witness re-enters room)

3 THE COURT: Thank you, Dr. Ellson. The good news
4 is you get to keep testifying.

5 (Laughter)

6 THE COURT: The bad news is you get the keep
7 testifying.

8 (Laughter)

9 THE COURT: Go ahead, Ms. Black.

10 MS. BLACK: Thank you so much. TRDX-340, please.

11 BY MS. BLACK:

12 Q Dr. Ellson, the plan administrator has criticized you
13 and asserted that your work played virtually no role in the
14 models and testing of LoanKinetics and have only a general
15 understanding of how that software works. What is your
16 response to this criticism?

17 A Well I think it's -- quite frankly I think it's
18 ridiculous. I was designed, I was conceived LoanKinetics, I
19 did the business plan on LoanKinetics, I had to sign off on
20 every task as it was completed in the development of
21 LoanKinetics, I did the marketing material on LoanKinetics.
22 Again, I met with over 50 clients. So their whole statement
23 is totally inaccurate.

24 It was very important, again, ADCO being a small
25 company, that people had -- most everyone had multiple tasks

1 to work on, so coordinating the work on LoanKinetics were
2 very difficult. I coordinated very closely with the heads
3 of the modeling group, the programmers in financial
4 engineering in order to get the project done. And again,
5 ADCO is a very small firm, we acted as a team, these group
6 leaders sat about ten feet away from me.

7 Q And did you communicate with them on a regular basis?

8 A Every day, and we also had weekly staff meetings and
9 weekly management committee meetings, and I was on the
10 management committee.

11 Q And in your role as a member of the management
12 committee meeting and in your role as the head of the
13 enhanced solutions group did you also have occasion to speak
14 with the heads of the financial engineering groups and the
15 modeling groups about the models that are being integrated
16 into LoanKinetics?

17 A Yes, that was done, and again, resource allocation was
18 a critical factor in the development of LoanKinetics, and we
19 had those discussions in the management committee meetings.

20 MS. BLACK: Can we please have TRDX-345.

21 BY MS. BLACK:

22 Q The plan administrator has also criticized you and
23 stated that you cannot attest to the reliability or accuracy
24 of the values that you used -- sorry -- that you generated
25 using LoanKinetics. What is your response to that?

1 A Well I don't know what they mean by unreliable. Again,
2 LoanKinetics communicates or calls with models, the
3 LoanDynamix model, the valuation models, it ties out to the
4 dollar. When I valued the NLL pool I used the default
5 settings for LoanDynamix, I used the default forecasts of
6 Andrew Davidson & Co., and so did Dr. Fischel, to my
7 understanding, and so the results are very consistent, very
8 accurate, and very reliable.

9 Q In its pretrial brief the plan administrator provides
10 two examples that we have not previously seen in any of the
11 plan administrator's expert reports which the plan
12 administrator uses to argue that unreliability of
13 LoanKinetics was starring you in the face and you simply
14 chose to ignore it. Are you aware of that?

15 A Yes, I am.

16 Q Okay. So the two examples are relatively similar in
17 nature so why don't we just focus on the second one.

18 MS. BLACK: Can we have TRDX-347, please.

19 BY MS. BLACK:

20 Q Can you just explain to us what the argument is as you
21 understand it, what is the argument that is being made by
22 the plan administrator?

23 A Well this is from data -- servicing data from May of
24 2017 through September of 2017. In that period they argue
25 that 804 loans have liquidated, I did my report using April

1 data, so this is the subsequent months. They argue that
2 there were \$94 million in realized losses. Realized losses
3 are actual losses. And they claim that there's a 400 -- 144
4 million claim purchase price -- net purchase price which
5 should be the purchase price minus the credit. Then they
6 argue that Lehman argues that LoanKinetics is not reliable.

7 Q And so these 804 loans are loans that the claim --
8 sorry -- that the plan administrator claims have liquidated
9 since you did your analysis?

10 A Well they used the term liquidated, the 804 loans have
11 terminated.

12 Q Okay. And that's out of the universe of the 15,739
13 loans that you valued?

14 A That's correct.

15 Q Okay. So I understand that you looked into this issue.

16 MS. BLACK: And can we please have TRDX-348.

17 BY MS. BLACK:

18 Q What did you find when you investigated this criticism
19 by the plan administrator?

20 A Well first of all, you know, this is a relatively small
21 number of loans and they're basically ad hoc terminations,
22 they're random terminations, if you will. In order to
23 properly assess LoanKinetics you would have to draw a proper
24 sample of the NLL and follow those loans out to the final
25 maturity of those loans.

1 You know, moreover, their argument that there's \$94
2 million in losses totally contradicts Mr. Castro's assertion
3 that they would not experience any losses.

4 And finally comparing the net purchase price to actual
5 realized losses is not a proper comparison, it's apples and
6 oranges. It should be actual realized losses versus
7 estimated losses from LoanKinetics.

8 MR. MCCALLEN: Your Honor?

9 THE COURT: Yes.

10 MR. MCCALLEN: I'd just like to assert an
11 objection. All of this is new, but in light of the fact
12 that he's responding to things in our pretrial brief --

13 THE COURT: Yes.

14 MR. MCCALLEN: -- we're going to let it go. But
15 there is one portion of what he said with respect to
16 responding to Mr. Castro's assertion which is an AMA
17 argument about their experiencing any losses with respect to
18 the active loans.

19 Again, new and outside the scope of his report and
20 the subject matter of his proffered testimony, Your Honor.

21 THE COURT: Which piece of testimony corresponds
22 to that objection?

23 MR. MCCALLEN: Let me just scroll up, Your Honor.
24 When he says moreover -- and I see it at line 3508, Your
25 Honor. Moreover, their argument that there's 94 million in

1 losses totally contradicts Mr. Castro's assertion that they
2 would not experience any losses. I understand and I don't
3 want to --

4 THE COURT: It's just an observation. Well it's
5 his observation, I don't know if it's meaningful or not.
6 But -- so --

7 MR. MCCALLEN: To the extent that it's being
8 offered under the rubric of expert testimony to Your Honor I
9 think it's outside of the scope of his testimony, but I
10 don't want to overly dwell on it.

11 THE COURT: Yeah. Okay. Let's just keep going.

12 MR. MCCALLEN: Thank you, Your Honor.

13 BY MS. BLACK:

14 Q Were you able to tie out the numbers that you saw in
15 the plan administrator's pretrial brief, the 804 loans, the
16 94 million, the 144 million net purchase price?

17 A No, my team attempted to do so, we were unable to tie
18 out exactly, and we saw nothing in any of the documents
19 provided by the plan administrator that would -- that
20 support those numbers.

21 Q Thank you. And I believe you testified something to
22 the effect of these were ad hoc terminations, they're not
23 statistically relevant. How can you determine the
24 predictive power of a model or system as LoanKinetics, how
25 do you know that it has good predictive power?

1 A Well you would compare actual realized losses to
2 estimated losses for LoanKinetics.

3 Q Okay. And does that go to your response that this is
4 not the correct comparison that the plan administrator seeks
5 to draw is not a good comparison, not a valid comparison?

6 A That's correct.

7 Q Okay. And --

8 A It should be actual losses versus estimated losses.

9 Q Okay.

10 MS. BLACK: Can we please have TRDX-352.

11 BY MS. BLACK:

12 Q So I would like you to elaborate on that a little bit
13 and explain to us how will you be able to compare actual
14 realized losses that are recorded by the servicer when a
15 non-liquidated loan goes from being an NLL to being a
16 liquidated loan to what LoanKinetics predicted.

17 A Well there are two columns that you need to look at.
18 One would be the current balance on the loan, and the other
19 would be the loss severity, and that would be the estimated
20 or predicted value of the loss as done by LoanKinetics.

21 Q Are these outputs that were generated by LoanKinetics?

22 A That's correct.

23 Q And were these outputs available to the plan
24 administrator?

25 A Yes, they were available in the affirmative report.

1 Q So those were outputs that you provided with your
2 affirmative report?

3 A That's correct. We provided this output for every loan
4 in the NLL pool.

5 Q So if the plan administrator had wanted to compare the
6 actual realized losses to just the loss portion that
7 LoanKinetics predicted on these very loans it could have
8 been done so?

9 A Yes, they could have.

10 Q Okay. Now --

11 THE COURT: Can we slow down a minute?

12 MS. BLACK: Uh-huh.

13 THE COURT: I'm not following this. If you go
14 back -- could you go back to TRDX-347, please.

15 So, Dr. Ellson, you're saying that the comparison
16 of \$94 million to \$144 million is not the right comparison?

17 THE WITNESS: That's correct, Your Honor.

18 THE COURT: Are you saying -- are you quarrelling
19 with the \$94 million?

20 THE WITNESS: No, I'm quarrelling with the fact
21 that the net purchase price was used as the point of
22 comparison. It --

23 THE COURT: What -- so what should -- what -- so
24 when we go back to the previous slide then what would that
25 number be?

1 THE WITNESS: Well we'll discuss that number in
2 another slide, but there is a predicted value that comes out
3 of LoanKinetics that we can compare to the 94 million in
4 realized losses.

5 THE COURT: Well why don't you keep going and I'll
6 see if you clarify my confusion. Go ahead.

7 MS. BLACK: I will try to do that now.

8 THE COURT: Okay.

9 BY MS. BLACK:

10 Q Dr. Ellson, LoanKinetics generates I think over 70
11 outputs, correct?

12 A Yes.

13 Q Okay. And among those outputs is there -- are there
14 any outputs with respect to -- and the totality of those
15 outputs is the future estimated cash flows month by month up
16 until maturity?

17 A That's correct.

18 Q Okay. Is there any portion of these outputs that
19 factors in just the possibility of the magnitude of losses
20 that would be suffered if the loan -- if the only fate this
21 loan could suffer is to go into default and liquidate?

22 A Yes, that's referred to as loss severity, which is the
23 percentage of outstanding balance so it would be written
24 off.

25 Q So if you wanted to compare what happened in real life

1 this loan after you valued it went into default, liquidated,
2 maybe it was already in default, and liquidated, and the
3 property was sold and an actual realized loss was reported
4 by the servicer to what LoanKinetics predicted would happen
5 in the event that that loan -- that very loan would default,
6 liquidate, the property would be sold, and what the loss
7 severity would be. Is that possible?

8 A Yes, it's quit possible. You simply have to multiply
9 the loss severity times the principal balance -- the
10 outstanding principal balance.

11 Q Now, did you do that? Did you investigate these
12 numbers by the plan administrator and look at what
13 LoanKinetics predicted --

14 A Yes.

15 Q -- in terms of the predicted loss in the event of
16 liquidation?

17 A Yes, I did.

18 Q Okay.

19 MS. BLACK: Can we please have TRDX-353.

20 BY MS. BLACK:

21 Q What did you find, Dr. Ellson?

22 A Well first of all we did not find that there were \$94
23 million in losses as Lehman asserted, we actually calculated
24 actual realized losses are 84.9 million or just short of 85
25 million. Again, we could not replicate Lehman's numbers

1 that were discussed previously. LoanKinetics predicted
2 realized losses of 78.34, that represents 92 percent of
3 actual realized losses. So in other words, LoanKinetics
4 predicted an estimate that was within 92 percent of the
5 actual realized losses in these loans.

6 Q And I understand you also conducted this exercise for
7 the other example that the plan administrator provides,
8 which is the example of loans that liquidated since the
9 trustees provided the LoanKinetics value during the protocol
10 process and that liquidated between that point in time and
11 when you submitted your report?

12 MR. MCCALLEN: Objection, your Honor. I'm going
13 to object to this as a new opinion, and I'm drawing a
14 distinction here, Your Honor, because previously I said with
15 respect to his prior testimony he was responding to
16 something we had put in our pretrial brief and I assumed
17 Your Honor would want to hear his response to it.

18 With respect to this analysis, Your Honor, this
19 appears nowhere in his reports and actually we asked him
20 about this at his deposition and I said:

21 "Did you conduct any sort of analysis to
22 compare whether the loans that liquidated between
23 September of 2016 and April of 2017 liquidated at
24 a value consistent with the LoanKinetics valuation
25 that you provided?"

1 And his answer was, "No, I did not do that."

2 And the citation for that is his deposition
3 transcript at page 166, line 12 through 19, and I can give
4 Your Honor a copy if you want.

5 But for that analysis he didn't do it in his
6 report, I asked him about it at his deposition and he hadn't
7 done it, and if he's going to come along now and try to
8 explain that the analysis either could have been or it was
9 irrelevant and let me tell you why it's irrelevant that's
10 something that we should have understood at the deposition,
11 that we understood in his report, and we didn't.

12 So, Your Honor, I'm going to object to this line
13 of testimony as new.

14 THE COURT: Okay. Ms. Black?

15 MS. BLACK: Again, he was asked a hypothetical
16 question in his deposition. The numbers were for the first
17 time presented in the pretrial brief. That being said I'm
18 happy to just focus on the second example.

19 THE COURT: What do you mean the second example?

20 MS. BLACK: Which is the loans that liquidated
21 since -- that he valued and that liquidated since he valued
22 these loans.

23 THE COURT: But the portion of the -- but at his
24 deposition he indicated that he hadn't done anything on that
25 point.

1 MS. BLACK: That was with respect to loans that
2 the trustees had valued during the protocol process and that
3 had liquidated.

4 So there are two sets. One is loans that were
5 valued by the trustees during the protocol process
6 liquidated since, the other set is loans that he valued
7 liquidated since. He was only asked the question at his
8 deposition with regard to the first set, and that's what I
9 understand counsel for the plan administrator to take issue
10 with.

11 THE COURT: You've lost me. You've all lost me.
12 Sorry.

13 So with specificity somebody tell me what pool --
14 what loans are we talking about?

15 MR. MCCALLEN: So there's two sets of loans that
16 are being discussed here, Your Honor. The first one --
17 and --

18 THE COURT: Are you talking about the 804 loans
19 that are on --

20 MR. MCCALLEN: So let's call that the first one.

21 THE COURT: Okay.

22 MR. MCCALLEN: So that set of loans are loans that
23 liquidated between the date that Dr. Ellson did his
24 report --

25 THE COURT: Right.

1 MR. MCCALLEN: -- which is June, and it was as of
2 I think around the time we did our pretrial brief, so there
3 was about four months or five months during that time
4 period.

5 THE COURT: Okay.

6 MR. MCCALLEN: That was 804 loans.

7 There's this second set of loans, and I'll call it
8 second but it actually happened before, so we're looking at
9 a different period of time here, and that's April of 2016
10 through June of 2017, and I'll explain those dates.

11 April 2016 is the first time that we know that
12 Duff & Phelps, on behalf of the plan administrator, ran
13 LoanKinetics -- I'm sorry -- on behalf of the trustees ran
14 LoanKinetics through the pool of active loans. At that
15 point the pool of active loans was more than 20,000.

16 Then the second date we're using is Dr. Ellson's
17 report, which is June of 2017. So the issue there is
18 whether when we look at what happened between April 2016
19 whenever the trustees first ran LoanKinetics and a year
20 later when Dr. Ellson looked at it, did the results match
21 up? In other words, did LoanKinetics accurately predict
22 what was going to happen with those 1800 odd loans that
23 liquidated during that time period?

24 THE COURT: Okay.

25 MR. MCCALLEN: And so to get to the point of what

1 we're objecting to for the questioning, that second group
2 we're talking about between April -- the 1800 between April
3 of 2016 through June of 2017 I'm objecting to his testimony
4 with respect to those loans because I specifically asked him
5 about that at his deposition. I'm happy to give Your Honor
6 a copy of the transcript --

7 THE COURT: Okay.

8 MR. MCCALLEN: -- so you can see it.

9 THE COURT: No, I heard that.

10 MR. MCCALLEN: Uh-huh.

11 THE COURT: So we're not going to go into that.

12 MS. BLACK: It's just to illustrate the point,
13 it's really the same point with regard to, so I'm very happy
14 to just focus on the second set, which is the loans that he
15 valued and that liquidated since. It's -- I can make my
16 point just with one example. And it will shorten.

17 Just one thing I do want to repeat. Though he was
18 asked a hypothetical question with regards to that earlier
19 set in his deposition, the numbers were never presented
20 until --

21 THE COURT: This is beyond. He was offered an
22 opportunity in the deposition to describe whether or not he
23 had done this comparison or these analytics and the answer
24 was no, so he can't do them now for the first time.

25 MS. BLACK: He was asked the question but they had

1 not presented numbers in order to draw the comparison until
2 their pretrial brief.

3 THE COURT: Could you read it again, Mr. McCallen?

4 MR. MCCALLEN: Of course, Your Honor. Would you
5 like a copy, Your Honor?

6 THE COURT: No, if you could just read it I would
7 appreciate it.

8 MR. MCCALLEN: Okay. The question is:

9 "Did you conduct any sort of analysis to
10 compare whether the loans that liquidated between
11 September of 2016 and April of 2017 liquidated at
12 a value consistent with the LoanKinetics valuation
13 that you provided?"

14 Objection from Ms. Black.

15 Answer, "No, I did not do that."

16 THE COURT: Okay. That's the end of it. He
17 didn't do it, he's not going to testify about it today.
18 Okay? It doesn't matter that it was a hypothetical, it was
19 asked in a qualitative way, in other words, did you
20 independently perform this analysis in order to double
21 check, back check, stress test the output of LoanKinetics
22 and the answer was no. So we're not going to do it for the
23 first time today.

24 MS. BLACK: Can I have -- just ask a clarifying
25 question?

1 THE COURT: Could you please come up?

2 (At sidebar off the record)

3 BY MS. BLACK:

4 Q Dr. Ellson, going back to my previous question. So you
5 compared the actual realized losses on a set of loans that
6 liquidated since you valued them through LoanKinetics to
7 what LoanKinetics predicted was going to be the loss in the
8 event of liquidation. Can you just talk about that -- just
9 that set and what did you find?

10 A Yes. Well again we calculated actual realized losses
11 of \$193 million, again, this is -- differs from what Lehman
12 argued, which is \$244 million. LoanKinetics predicted
13 realized losses of \$168 million, which is 92 percent of
14 actual. So the estimated losses were 92 percent of actual
15 losses.

16 Q And how does this --

17 A Oh, I'm sorry I was looking at the other one.

18 Q Okay. Go ahead, yes.

19 A I apologize. Actual realized losses were -- we
20 calculated to be just short of \$85 million, LoanKinetics
21 predicted \$78.3 million, and again that's 92 percent of the
22 actual losses.

23 Q And what does the fact that the LoanKinetics predicted
24 loss was within 92 percent of the actual realized loss? How
25 does this in fact inform you with respect to the values that

1 you generated using LoanKinetics?

2 A Well I think it points to the accuracy and reliability
3 of LoanKinetics.

4 Q And how does the fact that the loans ended up
5 liquidated -- liquidating at a higher realized loss than
6 what LoanKinetics predicted factor into the value generated
7 by LoanKinetics?

8 A Well the value of LoanKinetics, the value that it
9 generated was obviously contingent upon the characteristics
10 of the loans and the assumptions that went into the models.
11 And again, 92 percent is highly accurate in this context and
12 that was a very important element that we discovered and
13 calculated.

14 Q Let me ask you differently. Had LoanKinetics known
15 that the actual realized loss would be 85 million rather
16 than 78 million, would the value generated by LoanKinetics
17 for these loans have been higher or lower?

18 A Well they would be -- if they were lower losses or
19 expected losses the value of those loans would be higher.

20 Q So the value that was actually generated by you using
21 LoanKinetics was higher than it would have been had
22 LoanKinetics known that these loans were liquidated --
23 liquidate just a mere month later at a higher loss?

24 A That's correct.

25 Q Okay.

1 MS. BLACK: Your Honor, I have concluded by direct
2 examination at this point.

3 THE COURT: Okay. Very good.

4 All right. I think this would be a good time to
5 take the lunch break. We will -- is an hour sufficient?

6 MR. MCCALLEN: Certainly works for us.

7 THE COURT: Is an hour okay?

8 MR. MCCALLEN: Certainly is for us, Your Honor.

9 MR. COSENZA: That's fine, Your Honor.

10 THE COURT: Okay?

11 MR. MCCALLEN: Thank you, Your Honor.

12 THE COURT: All right? Dr. Ellson, same rules
13 apply to your lunch. We'll see you back here in an hour.

14 THE WITNESS: Yes, Your Honor. Thank you.

15 THE COURT: Thank you.

16 (Recessed at 12:20 p.m.; reconvened at 1:28 p.m.)

17 THE COURT: Hello. Please have a seat. All set?

18 MR. MCCALLEN: All set, Your Honor.

19 THE COURT: Okay. Let's keep going. Go ahead,
20 Mr. McCallen. Do you have a binder?

21 MR. MCCALLEN: Oh, yes. Yes. So, Your Honor,
22 just to let you know in advance --

23 THE COURT: Uh-huh.

24 MR. MCCALLEN: -- I think I made a lot of progress
25 in cutting this down over lunch and so I'm going to try and

1 do this in an hour.

2 THE COURT: All right.

3 MR. MCCALLEN: I know we have Mr. Finkel scheduled
4 for this afternoon and we would like to --

5 THE COURT: Yes.

6 MR. MCCALLEN: -- proceed with him as soon as
7 possible.

8 THE COURT: Okay. Thank you.

9 (Pause)

10 MR. MCCALLEN: Okay?

11 THE COURT: Okay.

12 CROSS-EXAMINATION

13 BY MR. MCCALLEN:

14 Q Good afternoon, Dr. Ellson.

15 A Mr. McCallen, how are you?

16 Q Good. Prepared to proceed?

17 A Yes, I am.

18 Q Okay. Dr. Ellson, you arrived at the estimated market
19 value calculation that you offered to the Court in your
20 expert report using the LoanKinetics software from Andrew
21 Davidson, correct?

22 A That's correct.

23 Q In addition to ADCO's LoanKinetics there are other
24 products available to value residential mortgage loans,
25 correct?

1 A To value residential mortgage loans, no, that is the
2 product.

3 Q There are not four or five similar products available
4 from different companies?

5 A To value?

6 Q Yes.

7 A No.

8 Q Mr. Ellson -- I'm sorry -- Dr. Ellson, could you just
9 look at the --

10 A Whatever you prefer.

11 Q -- binder that was just placed in front of you, and
12 behind the first tab there is a deposition transcript.

13 A Yes.

14 Q I'd like you to take a look at page 11, line 12.
15 Question --

16 A Sorry, which page are you referring to?

17 Q I'm sorry. So it's page 11 of the transcript.

18 A That would be right in the beginning.

19 Q Line 12, and I'm going to read the transcript to you,
20 sir.

21 A All right.

22 Q "Are there other methods available to valuing
23 residential loans other than LoanKinetics?"

24 Ms. Black, "Object to form."

25 Answer, "Other firms have comparable models."

1 Question, "What other firms?"

2 "CoreLogic has one, RiskSpan has one, there are others
3 that I can't think of right at this minute."

4 Question, "How many are you aware of in general?"

5 Ms. Black, "Objection, asked and answered."

6 Answer, "In general probably, you know, four or five
7 similar models, that's a guess."

8 I asked you those questions ask you gave me those
9 answers, correct?

10 A That's correct.

11 Q Now, in connection with issuing your expert report in
12 this case you did not run any of those other models to come
13 up with an estimated value for the loans at issue, correct?

14 A That's correct.

15 Q Is it -- and it's possible that one of the competing
16 models would have come up with a different value for the
17 loans at issue than the LoanKinetics, correct?

18 A It is possible.

19 Q In fact in addition to not running any of those other
20 models in connection with issuing your opening report in
21 this matter you didn't consider doing any other tests or any
22 other potential methodology of valuing the active loans at
23 issue in this case, correct?

24 A That's because I was using LoanKinetics strictly.

25 Q Understood. But you didn't consider any other

1 potential methods, correct?

2 A No.

3 Q Okay.

4 A Potential methods referring to what? Other --

5 Q Any other --

6 A -- firms?

7 Q -- whether it be any of the other products that are out
8 there or any other models or valuations that you either know
9 of or could have come up with to value the loans at issue in
10 this case.

11 A That's correct.

12 Q Dr. Ellson, you left ADCO in 2015, correct?

13 A Yes, I did.

14 Q And as I think you testified earlier you were the
15 product manager at ADCO while you were there, correct?

16 A For LoanKinetics, yes.

17 Q For LoanKinetics. Thank you to the clarification.

18 Now, ADCO has a modeling group and a financial
19 engineering group, correct?

20 A That's correct.

21 Q The modeling group and financial engineering group
22 handled the modeling of the loans that LoanKinetics calls
23 upon, right?

24 A What do you mean by handles?

25 Q They were responsible for the modeling of the models

1 that LoanKinetics calls upon?

2 A That's correct.

3 Q And you were not in the modeling group or the financial
4 engineering group at ADCO, correct?

5 A No, I was not.

6 Q Dr. Ellson, you provided testimony this morning which I
7 think would help me shortcut this a little bit, but with
8 respect to LoanDynamix in particular you testified about
9 LoanDynamix this morning, right?

10 A That's correct.

11 Q And LoanDynamix is the model that projects the credit
12 performance, right?

13 A That's correct.

14 Q And ADCO's modeling group was responsible for modeling
15 of LoanDynamix, right?

16 A That is correct.

17 Q And again you weren't in the ADCO modeling group,
18 right?

19 A That is correct.

20 Q Okay. And then with respect to -- I'm going to
21 actually point you to your opening report in this case, that
22 is going to be PA Exhibit 1, which is behind tab 2 of your
23 binder. And if you can take a look at, it's page 8 of 12
24 using --

25 A I'm sorry, tab 2 of the binder?

1 Q Tab 2 of the binder, PA Exhibit 1. You're the first
2 deposition and first exhibit of the case.

3 A Is this your binder or the one I was using before?

4 Q Our binder. I'm sorry. From here on it'll be our
5 binder.

6 A Got it. Appreciate that. Thank you. All right.

7 Q And if you could take a look at page 8 of 22.

8 A Page 8 of 22.

9 Q Do you see the figure that's here? This is similar to
10 the figure you had up in front of the Court this morning
11 when you were describing LoanDynamix and LoanKinetics,
12 correct?

13 A That's correct.

14 Q Okay. Now, if you look on the left-hand side you see
15 box 2 it talks about various loan characteristics. Do you
16 see that?

17 A That's correct.

18 Q And then in box number 3 which appears in the lower
19 right-hand corner you'll see macroeconomic assumptions in
20 there. Do you see that?

21 A Yes.

22 Q And in box 4 the cumulative probabilities. Do you see
23 that as well?

24 A Yes.

25 Q Now, you didn't select the inputs that went into all of

1 those different features all feeding the LoanDynamix,
2 correct?

3 A Yes, they do.

4 Q And you didn't select the inputs that went into
5 LoanDynamix, correct?

6 A That is true.

7 Q And in addition to LoanDynamix LoanKinetics calls on
8 the credit auction adjusted spread model as well, that's
9 right?

10 A Yes.

11 Q And the modeling group developed that model as well to,
12 right?

13 A Financial engineering group developed that model.

14 Q The model and financial engineering group. Thank you
15 for the clarification.

16 And as you testified earlier you weren't in that group,
17 correct?

18 A That's true.

19 Q And quickly just to cover a couple of the other models
20 that LoanKinetics called upon I believe you testified to the
21 HPI (sic) model?

22 A The housing price model, yes.

23 Q Correct. And that model is important for generating
24 accurate results for LoanKinetics, correct?

25 A It's important to have that model integrated, yes, into

1 LoanKinetics, yes. Accurate and consistent.

2 Q So it's important that it be accurate and consistent,
3 correct?

4 A That's correct.

5 Q And the modeling group and financial -- modeling and --

6 A Financial engineering.

7 Q -- financial engineering group developed that model as
8 well, correct?

9 A That's correct.

10 Q And one final model, Dr. Ellson, the term structure
11 model, I think that's also a model that LoanKinetics calls
12 upon; is that right?

13 A Yes.

14 Q Was that model also involved -- sorry -- was that model
15 also developed by the modeling and financial engineering
16 group?

17 A Yes.

18 Q And you were not involved in that as well, right?

19 A That's true.

20 Q When you were employed at ADCO you believed that ADCO
21 conducted testing or validation of the models that
22 LoanKinetics calls upon, right?

23 A Yes, I do.

24 Q And that included stress tests on the models?

25 A Yes, that would be part of development.

1 Q And that would include changing input parameters like
2 housing pricing shocks or interest rates to see how stable
3 the results are, correct?

4 A That would be one of many tests.

5 Q And the validation of LoanKinetics also involved
6 forecasting credit performance; is that correct?

7 A It doesn't forecast anything.

8 Q The validation of LoanKinetics --

9 A It doesn't forecast, it takes output from the
10 LoanDynamix model and output from the valuation models and
11 generates output and analysis as required by the client. It
12 does not generate anything to do with the projected cash
13 flows.

14 Q My question is with respect to the process of
15 validation that occurred at ADCO. Whether the process of
16 the validation of LoanKinetics involved forecasting and
17 credit performance.

18 A At ADCO for LoanDynamix model?

19 Q Yes.

20 A The LoanDynamix model was developed, tested, and
21 validated. All the models that LoanKinetics called were
22 tested and validated.

23 Q Okay. The process involves -- the process
24 (indiscernible - 2:06:38) involves stress testing some of
25 the inputs into the model like housing prices and interest

1 rates, correct?

2 A Among others, yes.

3 Q You don't know the methodology used to stress test the
4 housing prices generated by the HP model to determine
5 whether they were in a range of acceptable outcomes,
6 correct?

7 A That was all done prior to my employment.

8 Q So the answer is no?

9 A That's correct.

10 Q You don't know the methodology used to stress test
11 interest rates to determine if the results for that model
12 were within the range of acceptable outcomes either, right?

13 A They were done before my employment, that's right.

14 Q Again, so the answer is no?

15 A The answer is no.

16 Q You also don't know what margin of error in the results
17 from LoanKinetics were deemed acceptable in order to
18 determine that LoanKinetics was valid and could be put on
19 the market, correct?

20 A There is no margin of error. The numbers had the tie
21 out to the dollar, as I testified earlier.

22 Q Okay. I'd like you to take a look of your testimony
23 again.

24 THE COURT: Okay. I think you're talking past
25 each other. Okay? I think that Dr. Ellson just gave an

1 answer that speaks to the operation of LoanDynamix on a
2 stand-alone basis and the operation of LoanDynamix within
3 the construct of LoanKinetics. Is that what your answer was
4 about?

5 THE WITNESS: Yes, Your Honor.

6 THE COURT: Okay. I don't think that was the
7 answer that you were asking.

8 MR. MCCALLEN: It wasn't, Your Honor. Thank you
9 for the clarification.

10 THE COURT: Okay. All right.

11 MR. MCCALLEN: Maybe -- I'm going to try to ask a
12 better question.

13 BY MR. MCCALLEN:

14 Q So again I'm talking in the context of the testing that
15 took place at the time that LoanKinetics was validated,
16 right?

17 A The testing in what context? Again, the models were
18 tested and validated and they were integrated into
19 LoanKinetics, hundreds of thousands of loans were tested by
20 LoanKinetics calling those models, and again the objective
21 of that was to verify that the numbers were exactly the same
22 to the dollar. Whatever internal or external use was of the
23 models.

24 Q So LoanKinetics provides an estimated market value for
25 any given loan, correct?

1 A It takes those values from the valuation models. It
2 does not generate again the value. The option adjusted
3 spread model, the credit option adjusted spread model is the
4 one that generates the values.

5 Q Okay. So I'm trying to get a clear understanding,
6 Doctor. So you provided to the Court an estimated market
7 value on a loan by loan basis, correct?

8 A That's correct.

9 Q All right. Did you use LoanKinetics for that?

10 A Yes, I did.

11 Q Okay. So LoanKinetics provides then an estimated
12 market value on a loan by loan basis, right?

13 A That's output that's delivered to LoanKinetics, yes.

14 Q Okay. So my question is whether you know what margin
15 of error was deemed acceptable for ADCO in determining
16 whether LoanKinetics was valid, it could be put to the
17 market with respect to the accuracy of the estimated market
18 value that it produces.

19 A Again, you're asking a question that's not applicable
20 to LoanKinetics. LoanKinetics takes the output from
21 LoanDynamix, that's the credit analysis, it takes the values
22 from credit option adjusted spread and creates reports and
23 analysis from that output.

24 Q Was there any testing done to determine whether the
25 estimated market value produced by LoanKinetics was getting

1 it right?

2 A What do you mean by getting it right?

3 Q Was it producing a number that was accurate?

4 A Well there's no market, and what LoanKinetics does is
5 totally consistent with level three pricing, the FASB 157.
6 There is no market.

7 Q So it's your view there was no way to test the accuracy
8 of LoanKinetics?

9 A What do you mean by accurate? There's no market.

10 Q I mean whether or not the estimated market value that
11 LoanKinetics produces is in fact an accurate prediction of
12 the value that the loan will liquidate at eventually.

13 A It's an accurate prediction based on ADCO models, the
14 assumptions that were used, the forecasts that were used.
15 It's very accurate, to the dollar.

16 Q Dr. Ellson, you've discussed your experience while you
17 were employed at ADCO. I want to talk specifically about
18 and draw a distinction between that time and the work you
19 performed in connection with your report here.

20 A Okay.

21 Q That you've done in this case.

22 So as of June 1st, 2017 when you issued your report in
23 the case you didn't do anything to verify the reliability of
24 the valuation numbers LoanKinetics generated for the loans
25 in your report, you relied on the modelers at ADCO to get it

1 right, correct?

2 A The valuations came out of the models.

3 Q Right. Did you do anything to test the reliability?

4 A To test the reliability again in what context? The
5 models are monitored, developed, and tested by the
6 appropriate groups. I relied on them. I knew these people
7 and I relied on their expertise.

8 Q So you relied on them but you personally didn't perform
9 any calculations to test the reliability of the numbers that
10 LoanKinetics generated?

11 A I did not have access to the models in this basis to
12 perform those types of tests, that's done within the
13 appropriate groups.

14 Q So I'm -- so the answer to my question is that no you
15 didn't personally perform any calculations to check the
16 reliability of those numbers?

17 A Again, what do you mean by reliable? The numbers
18 are --

19 Q My question is whether you --

20 A -- consistent, the numbers are accurate, and it
21 produced a very appropriate estimated market value.

22 Q So, Dr. Ellson, the question that I'm asking is whether
23 you performed any calculations to check the reliability of
24 the figures from ADCO's LoanKinetics?

25 A The reliability of LoanKinetics depends on the

1 reliability of the models that it calls, and no, I did not
2 test those.

3 Q Since you left ADCO in 2015 you haven't had any
4 involvement in testing of LoanKinetics since that time,
5 correct?

6 A That's correct.

7 Q Dr. Ellson, your opinion does not include any margin of
8 error for the estimated market value figure calculated for
9 each loan in your report, correct?

10 A I was asked to provide an estimate, not a range of
11 estimates.

12 Q I understand, sir, but my question was whether you
13 provided a margin of error in your opinion?

14 A Again, there is no margin of error. The output comes
15 from the models and it ties out to the dollar.

16 Q Okay. So the answer is no?

17 A In the way you framed the question the answer is no. I
18 don't believe that your question is appropriate.

19 THE COURT: Mr. Ellson -- Dr. Ellson, so I'll
20 decide whether his questions are appropriate.

21 THE WITNESS: Okay. I'm sorry, Your Honor.

22 THE COURT: Okay? This is cross-examination and
23 this is difficult stuff so Mr. McCallen is trying to form
24 questions, some of them may or may not be perfect questions.

25 I think the question ultimately that Mr. McCallen

1 is putting is that if there were a glitch in the machine, if
2 there were a glitch in LoanDynamix LoanKinetics would take
3 that glitch and when it called on LoanDynamix somehow that
4 glitch would not get translated into the output from
5 LoanKinetics, right?

6 THE WITNESS: If there is a glitch or an error --

7 THE COURT: Right.

8 THE WITNESS: -- say the wrong -- you know, some
9 of the wrong data or the dates didn't line up.

10 THE COURT: Or a piece of code, you know, was
11 wrong.

12 THE WITNESS: Okay. But in validating
13 LoanKinetics you would test that --

14 THE COURT: Sure.

15 THE WITNESS: -- externally.

16 THE COURT: I understand.

17 THE WITNESS: But in the context of doing the
18 analysis, no, that would not have been captured.

19 MR. MCCALLEN: Okay. I can proceed, Your Honor.

20 THE COURT: Okay?

21 MR. MCCALLEN: Yes.

22 THE COURT: Okay. Let me ask a different
23 question.

24 So we have -- and I'm going to block a name of the
25 mortgage-back security pricing part of it. There's

1 LoanDynamix and there's --

2 THE WITNESS: Credit option adjusted spread.

3 THE COURT: -- credit option adjusted spread.

4 Okay. So if I have -- so I have credit option adjusted
5 spread and I have LoanDynamix and they work together in
6 LoanKinetics, right?

7 THE WITNESS: That's correct, right.

8 THE COURT: Okay. And you explained very clearly
9 this morning how the credit option pricing spread does its
10 thing on the loans. I get that. And then something comes
11 out and LoanKinetics tells you what that is, right?

12 THE WITNESS: That's correct.

13 THE COURT: And that's what generates the answer
14 that you provided to the trustees in this case, right?

15 THE WITNESS: That's correct.

16 THE COURT: Okay. So simplistically -- very
17 simplistically if you have two chemicals, right, you have
18 chemical A and chemical B, right, and you put them into
19 something and they come out you might have chemical A and
20 chemical B or you might have some third chemical, right, you
21 don't really know how the chemicals are going to react.

22 You're telling me that you know how those two
23 models react and that the way they react provides a --
24 generates an output from LoanKinetics that is valid, right?

25 THE WITNESS: That's correct, Your Honor.

1 THE COURT: Okay. And that interaction in your
2 view has itself been validated. In other words, the
3 integrity of each of those models and the way those models
4 talk to each other and then get called up by LoanKinetics.

5 THE WITNESS: That's correct, Your Honor.

6 THE COURT: Okay.

7 MR. MCCALLEN: Thank you, Your Honor.

8 BY MR. MCCALLEN:

9 Q In connection with the report that you issued on
10 June 1st you didn't personally run the LoanKinetics
11 software, correct?

12 A My team did.

13 Q At Duff & Phelps?

14 A That's correct.

15 Q Okay. So your team is at Duff & Phelps?

16 A For this particular project, yes.

17 Q And when you had Duff & Phelps run LoanKinetics on the
18 loans at issue here you relied on ADCO's default tuning
19 settings, correct?

20 A Yes.

21 Q And during your time at ADCO you were not involved in
22 the setting or determination of those default settings,
23 correct?

24 A That's true.

25 Q In connection with valuing the pool of non-liquidated

1 loans at issue here and specifically in connection with the
2 report that you issued you did not review the default tuning
3 settings to determine whether or not you thought they were
4 appropriate, correct?

5 A That's correct.

6 Q Similarly you did not change any of the default
7 settings that ADCO permits you to change to test for
8 sensitivities to those changes, correct?

9 A I did not want to impose my views on settings or the
10 assumptions or the forecasts.

11 Q I understand, sir, but my question was different. My
12 question was whether you adjusted the default settings in
13 any way to test for sensitivities to see if you changed
14 those settings how that would impact the ultimate results.
15 You didn't do that, correct?

16 A No, I did not.

17 Q Thank you.

18 Dr. Ellson, please take a look at plan administrator
19 Exhibit 3, which is behind tab 4. This document is called
20 LoanKinetics validation.

21 A Yes.

22 Q And it's by -- I'm going to try to get it right. I
23 believe it's Etna Delbase (ph).

24 A That's correct.

25 Q Did I say that correct? Great. Thank you. You're

1 familiar with this document, correct?

2 A Yes.

3 Q Let's take a look at page 9 of 28, and I'm counting 9
4 based on the numbers on the bottom of the document. Are you
5 there, sir?

6 A Yes. Does that start with the previous validated
7 components?

8 Q Yeah. So I'm in the -- so in the very last paragraph
9 is where I'm going to focus, and particularly what starts
10 with LDM allows, and you can also look at the screen, sir,
11 if that's easier for you too, we'll have it up there.

12 A Okay. But I'd like to see it here.

13 Q Sure.

14 A I'm not sure I have the right page.

15 MR. MCCALLEN: Can you zoom out?

16 THE WITNESS: So is it page 9 or is it page 11 or
17 28?

18 BY MR. MCCALLEN:

19 Q So it's page 9 counting from the bottom. You see where
20 it says page 9 of 28? And then --

21 A Okay.

22 Q -- if you look on the second --

23 A Okay. I have it now. Thank you.

24 Q Okay. And it says, "LDM user" -- pardon me, strike
25 that.

1 "LDM allows users to tune model parameters in
2 order to express their views about collateral
3 performance or market conditions. The tuning
4 parameters also allow users to perform sensitivity
5 analysis. This feature is particularly valuable for
6 periods when market conditions deviate drastically from
7 historical averages."

8 Do you see that?

9 A Yes, I do.

10 Q You did not perform any sensitivity analysis or any of
11 the other type of analyses described in that section of the
12 LoanKinetics document in connection with issuing your
13 report, correct?

14 A That's correct.

15 Q I want to continue reading in that document. It says:

16 "The website also provides advance tools for
17 measuring model fit and a number of dimensions. These
18 tools allow users to one, validate the fit of LDM to
19 historical loan types and cohorts."

20 In connection with issuing your report in this case you
21 didn't use any of the tools in LoanDynamix to validate the
22 fit of LoanDynamix to historical loan types and cohorts,
23 correct?

24 A That's correct.

25 Q Continuing on the passage says "that the tools allow

1 two, to measure the extent to which their loan performance
2 is similar to those LDM relies on." We'll stop there.

3 You did not do anything to measure the extent to which
4 the loan performance of the loans at issue here is similar
5 to the loan performance of the loans LDM relies upon,
6 correct?

7 A What do you mean LDM relies upon?

8 Q I'm reading exactly what the document says, sir.

9 A Well I'm not sure of the context of that statement.

10 Q So my question is, you did not do anything to measure
11 the extent to which the loan performance of the loans at
12 issue here is similar to the loan performance of the loans
13 that LDM relies upon, correct?

14 A That's correct.

15 Q And then further point three, "Adjust tunings
16 accordingly to ensure best fit." You did not do any -- you
17 did not make any adjustments at all to the tuning settings
18 in connection with issuing your opinion in this case,
19 correct?

20 A That's correct, I relied on the modelers at ADCO.

21 Q I want to now turn to page 15 and 16. It's the
22 paragraph that begins on 15 and carries over, but the
23 language I'm going to focus on is on 16. And it says, "We
24 have not specifically tested model accuracy on seasoned and
25 low balance loan pools." Do you believe that's an accurate

1 statement, sir?

2 A It's accurate, but it's not relevant here.

3 Q Okay. My question was do you believe that that's an
4 accurate statement?

5 A It's accurate in the sense that it did not look at
6 pools, it looked at loans.

7 Q So you believe that when ADCO writes in there loan
8 validation LoanKinetics document that we have not
9 specifically tested model accuracy on seasoned loan --
10 season and low balance pools that they were referring to
11 loans and not pools?

12 A Well they were referring to pools, but certainly the
13 analysis was done on season and low balance loans.

14 Q Okay. Sir, I'd like to direct your attention to your
15 deposition, and that's at page 144, line 17.

16 A I'm sorry.

17 Q Sorry, 144, line 17.

18 A Get back to this deposition. I'm sorry, I have a --
19 I'm there.

20 Q Question, "Do you know whether the results of
21 LoanKinetics have been tested on season loan pools?"

22 "Has it been tested?"

23 I'm sorry. Answer, "Has it been tested?"

24 Question, "Yes."

25 Answer, "We valued legacy loans when I was there, so if

1 you want to call that testing."

2 Question, "I'm not just using the word that ADCO uses
3 in its own document, right? ADCO says 'we have not
4 specifically tested model accuracy on season and low balance
5 loan pools,' so I'm asking whether or not you're aware that
6 this is true, that ADCO specifically tested model accuracy
7 on season loan pools."

8 Ms. Black, "Objection, mischaracterizes the document."

9 Answer, "I don't know."

10 I asked you those questions ask you gave me those
11 answers, correct, sir?

12 A That's correct, because it was done on pools. Pools
13 test differently than loans.

14 Q So my question was whether I had asked you those
15 questions and you gave me those answers at the deposition?

16 A That's right.

17 Q Thank you, sir.

18 When LoanKinetics was developed ADCO used a base case
19 of loans in that model development, correct?

20 A A base case? I don't know what you mean by that.

21 Q So was there a set universe of loans that ADCO tested
22 to see if they were getting the results right?

23 A We used hundreds of thousands of loans, some of which
24 we had in your database and some of which were given to us
25 by potential clients.

1 Q Okay. You currently don't have access to that body of
2 loans, correct?

3 A That's correct.

4 Q And you didn't have access to that body of loans
5 whenever you issued your report in this case, correct?

6 A That's correct.

7 Q So in connection with issuing your report you didn't
8 make any comparison between the loans that are at issue in
9 this case and the loans that were used by ADCO to develop
10 the models that LoanKinetics calls upon, correct?

11 A Comparable loans that had been analyzed in the testing
12 period. Comparable loans to the NLL. We tested legacy
13 loans.

14 Q My question, sir, was whether in connection with
15 issuing your report whether you compared the loans that are
16 at issue in this case with the loans that ADCO used to
17 develop the LoanKinetics -- develop LoanKinetics and the
18 models LoanKinetics calls upon to see whether or not those
19 are comparable? You didn't do that, correct?

20 A That would have been within LoanDynamix, not
21 LoanKinetics.

22 Q My question was whether you did that, sir?

23 A No, I did not.

24 Q I'd like to direct your attention to paragraph 17 of
25 your opening report, which should be behind tab 2.

1 A I'm sorry, what -- am I in your binder still?

2 Q I'm sorry. So it's PA-1, which is behind tab 2 in the
3 binder that I gave you.

4 A Okay. Yes.

5 Q And we're looking specifically at paragraph 16 -- I'm
6 sorry -- paragraph 17.

7 A Again, is that my expert report that I'm referring to
8 here?

9 Q Yes. I'm sorry.

10 THE COURT: Mr. McCallen, why don't you give
11 Dr. Ellson an assist.

12 THE WITNESS: Okay. I'm on --

13 THE COURT: Are you there Dr. Ellson?

14 THE WITNESS: I believe so. It's underneath the
15 overview of analytics and models utilized?

16 BY MR. MCCALLEN:

17 Q Correct. It's paragraph 17.

18 A Yes.

19 Q And there's one sentence in particular I want to focus
20 on, which we'll highlight on the screen for you.

21 "LoanKinetics is being used by mortgage banks,
22 mortgage loan insurers, and buy side firms for loan
23 valuations for financial reporting and investment
24 purposes."

25 See that sentence?

1 A That's correct.

2 Q And is that statement accurate?

3 A It was -- we had five clients at the time I left ADCO,
4 one of which was a -- like I mentioned a top 20 bank, there
5 were two other banks, there was a money manager, a hedge
6 fund, and we were in negotiations with mortgage insurers.

7 You have to understand that LoanKinetics is a six-
8 figure investment for a one-year lease, people don't take
9 that type of investment lightly.

10 MR. MCCALLEN: Your Honor, so I'll move the strike
11 the portions of the answer which were non-responsive. My
12 question was whether it was an accurate statement.

13 THE COURT: I think I'll let it stand.

14 MR. MCCALLEN: Okay.

15 THE COURT: All right?

16 MR. MCCALLEN: Thank you, Your Honor.

17 BY MR. MCCALLEN:

18 Q When you left ADCO in 2015 there were no mortgage loan
19 insurers that used LoanKinetics for loan valuation, for
20 financial reporting, and investment purposes, correct?

21 A That's correct.

22 Q And the bank that you refer to, can you tell us who it
23 is?

24 A No.

25 Q Why?

1 A Not permitted to by my separation agreement.

2 Q LoanKinetics is also used for valuation for trading
3 purposes, right?

4 A It's valuation for trading purposes, yes.

5 Q And again when you left ADCO one client used
6 LoanKinetics for valuation for trading purposes on a regular
7 basis, correct?

8 A Potentially more than one, because the bank that took
9 in the first client that took in LoanKinetics had a trading
10 operation on loans, they might well have used it there, and
11 there's a money manager and a hedge fund, both of who could
12 have used it for trading purposes. But when they lease a
13 model we don't over -- I don't oversee them.

14 Q When you left -- my question was when you left there
15 was one client that used LoanKinetics for valuation for
16 trading purposes on a regular basis, correct?

17 A I think there potentially could have been more than
18 one. Again, I don't -- once they lease the model it's in
19 their hands.

20 Q So it's hypothetically possible that --

21 A It's hypothetically --

22 Q -- they had other people --

23 A -- possible.

24 Q -- using their license?

25 A That's correct.

1 Q But as far as you are aware, sir, there was one client
2 who was using it for trading purposes at the time you --

3 A One that I was --

4 Q -- left?

5 A -- totally aware of. Yes.

6 Q Dr. Ellson, I want to turn to Plan Administrator
7 Exhibit 2, which is behind Tab 3 of your report. And this
8 is your reply report in this case.

9 A Okay.

10 Q Do you recognize that, sir?

11 A Yes, I do.

12 Q In particular, paragraph 12 on page 5 of 14.

13 A Okay.

14 Q You state here, "When divergence between actual and
15 model results are reserved, the modeler will 'tune' the
16 model to obviate the discrepancy and continue to monitor it
17 to observe whether the variation is temporary or a real
18 trend." Is that a true and accurate statement, sir?

19 A Yes, it's true. There are, you know, again, dozens of
20 loan types over a variety of origination years. The model
21 needs to be turned in some of the cases for some of the loan
22 types and some of the origination years. And tuning is a
23 common practice in this type of work.

24 Q Right. So I'm reading from your reply report and my
25 question is whether this is a true statement. Is that a

1 true statement, sir?

2 A That's correct.

3 Q And I believe you just testified you believe some
4 tunings at ADCO occur semi-annually to annually; is that
5 correct?

6 A I -- they occur infrequently, but, yes, semi-annual or
7 annual would probably be correct.

8 Q Okay. So I would like you now to turn to Tab 12 of
9 your binder, which is PA Exhibit 11. We're going to put it
10 up on the screen, but you also have access to it in your
11 binder.

12 (Pause)

13 Q Do you see the first line, and I -- I apologize. I
14 know it's a difficult document to make sense of. But at the
15 top there's a line that says, tuning values_2.1.text. Do
16 you see that?

17 A Yes, I do.

18 Q Now this is the ADCO tuning file provided to clients
19 showing the tunings to ADCO models, correct?

20 A I believe these are the tunings to the LoanDynamix
21 model, but I'm not sure.

22 Q But you have no reason to doubt that this -- these are
23 --

24 A These are --

25 Q -- the ADCO --

1 A -- the tunings --

2 Q -- tunings, correct?

3 A -- to the LDM. That's correct.

4 Q You did not review these tunings before or in
5 connection with issuing your report in this matter, correct?

6 A No, I did not.

7 Q Now each row in this document, which is 40 pages long,
8 represents individual tunings that were done on LoanKinetics
9 model -- ADCO models or models that LoanKinetics calls upon,
10 correct?

11 A They are LoanDynamix.

12 Q Okay.

13 A The tunings were on LoanDynamix, not on LoanKinetics.

14 Q So let me ask a cleaner question. So each of -- each
15 line in this document represents a tuning that was done on
16 LoanDynamix, correct?

17 A That's correct.

18 Q Let's take a look at one of these. I would like to
19 turn to page 2 of the document. About halfway down there
20 are various entries for LoanDynamix option arm. Do you see
21 that?

22 A Yes, I do.

23 Q That refers to a specific type of loan, right, option -
24 -

25 A Yes.

1 Q -- arm?

2 A Yes.

3 Q And what kind of loan is that?

4 A Well, it's a -- well, let me put it this way. When I
5 was at Washington Mutual in the portfolio there were \$60
6 billion worth of option arms. And with these particular
7 loans the borrower has the option of paying a fully
8 amortizing principal and interest, or they can pay interest
9 only, or they can pay something less than interest only, or
10 they can just make some minimum payment.

11 Q Okay. So thank you for that answer. That -- but this
12 is -- this type of loan is called a pay option arm, correct?

13 A That's correct.

14 Q All right. So now towards the end of this subset of
15 loans that we're looking at for the LoanDynamix option arms
16 you'll see a line, if you look to the right it says, tune
17 severity. Do you see that?

18 A Okay. Yes, I do.

19 Q Now that refers to the tuning or modification of loss
20 severity for that type of loan, correct, tune severity?

21 A I would think so, yes, but I have no way of knowing
22 that for sure.

23 Q Okay. So you don't know -- you didn't personally
24 determine whether or not the tune severity designation on
25 this document refers to loss severity as recorded in

1 LoanDynamix, correct?

2 A I do not -- would not know that for sure. That's
3 correct.

4 Q Now loss severe -- loss severity is the amount of loss
5 that would be suffered on a loan in the event of default,
6 correct?

7 A That's correct.

8 Q Would you agree to loss --

9 A Or foreclosure.

10 Q Would you agree that loss severity is an important
11 variable in measuring the value of a loan?

12 A Measuring the value, yes.

13 Q Now moving across -- from left to right across the row
14 you'll see that there are different tuning parameters
15 associated with different dates beginning with 5 of 2007 and
16 ending with 12 of 2014. Do you see that?

17 A Yes, I do.

18 Q Now looking, for example, at the first one which is
19 5/2007 or May 20, 2007, the value is .6. Now, sir, my
20 question is what this document shows is that if you ran
21 LoanKinetics in May of 2007 you would have to reduce the
22 loss severity outcome that LoanDynamix produces for option
23 arms securities by 40 percent to get to the correct result,
24 correct?

25 A I have no way of knowing that, what that .6 represents.

1 I was not involved in the model or the tunings.

2 Q Okay. So let's slide a little further on this
3 spreadsheet to the right. And you'll see for June 2012 the
4 value is 1.4. So the question is, again, if you ran
5 LoanKinetics in June of 2014 and you got the result for the
6 loss severity on the option arms securities, you have to
7 reduce or you have to increase the outcome by 40 percent in
8 order to get the correct value, correct?

9 A I have no idea whether your statement is correct or
10 not.

11 Q Okay. And just one more, sir, moving a little further
12 to the right, now as of December 2014 and the value says
13 2.2. That indicates that you need to multiply the loss
14 severity output for option arms by a factor of 2.2 for the
15 output from LoanDynamix to be accurate, correct?

16 A That's not -- I have no idea. It's not verified. I do
17 not know what that 2.2 represents.

18 Q Let's take a look at another one. I would like to look
19 at page 6 of the document. About a quarter of the way down
20 there's an entry for LoanDynamix subprime 228's. Do you see
21 that?

22 A I'm getting there.

23 Q Okay. Take your time. I know it's a cumbersome
24 document.

25 (Pause)

1 A Okay. I'm -- yes. I'm there.

2 Q And to the right of one of those entries you'll see it
3 says tune prob loss TD. Do you see that?

4 A That's correct. I see it.

5 Q Okay. Now this refers to a particular type of
6 security, a subprime 228, right?

7 A That's right.

8 Q And the column that says tune prob loss, that refers to
9 tuning the probability of loss in termination to default for
10 that security, correct?

11 A I can't guarantee that, but I would infer that.

12 Q That makes sense to you, right?

13 A It makes sense to me.

14 Q And to the right of that it says, always. Do you see
15 that?

16 A Yes.

17 Q And to the right of that it says 2.0, right?

18 A Yes.

19 Q And, sir, does that indicate that the value that
20 LoanDynamix calculates for subprime 228s with respect to
21 probability of loss needs to be multiplied by a factor of
22 two to be accurate?

23 A I can't attest to that at all.

24 Q Sir, you testified in your deposition -- or sorry. You
25 stated in your report that when divergence between actual

1 and model results are observed the model -- it will tune the
2 model to obviate the discrepancy and continue to monitor it
3 to observe whether the variation is temporary or a real
4 trend. If the divergence persists then it is systematic and
5 that element of the model will be modified and recalibrated
6 through proper model estimate procedures as appropriate.

7 If the tuning factors that I just showed you and
8 represented to you are accurate and, for instance, need to
9 be multiplied by a factor of two to produce the correct
10 result from now and always, does that represent the kind of
11 persistent divergence between model results and actual
12 results that --

13 A Well, I can't --

14 Q -- requires recalibration?

15 A -- I can't make that determination. I don't know what
16 those numbers represent.

17 Q Well, I'm asking you hypothetically, sir.

18 A Well, hypothetically could you repeat the question?

19 Q Sure. If LoanDynamix subprime 228 where it says that
20 the tuning of the loss probability needs to be multiplied by
21 a factor of two to be accurate regardless of what date you
22 use in order to run the calculation. If that's true does
23 that represent a persistent divergence between model results
24 and actual results that require recalibration of the
25 underlying model?

1 A Hypothetically, yes.

2 Q As far as you know the last time that any of the models
3 that LoanKinetics calls on were recalibrated was in 2012,
4 correct?

5 A It was recalibrated in 2010 and 2012, so that was the
6 last time. And there's only certain elements that were
7 recalibrated. For example, there's a transition from
8 seriously delinquent to terminated. That's the transition
9 that was re-estimated in 2010, and the loss severity
10 equation was the one that was re-estimated in 2012.

11 Q So the recalibrations that happened in 2012 were
12 limited then, correct?

13 A Well, limited to loss severity which is extremely
14 important.

15 Q And nothing else since then as far as you're aware of?

16 A Not that I'm aware of.

17 MR. MCCALLEN: So, Your Honor, I think we've been
18 going close to an hour. What I was going to suggest is I'm
19 trying to shorten it. I think --

20 THE COURT: Yeah.

21 MR. MCCALLEN: -- if we take --

22 THE COURT: We've been --

23 MR. MCCALLEN: -- a short break then I can --

24 THE COURT: We've been going for about 50 minutes
25 so we can take a short break particularly in the service of

1 trying to shorten things.

2 So we'll come back in ten minutes and hopefully
3 conclude with Dr. Ellson then.

4 (Recess taken at 2:13 p.m.; reconvened at 2:34 p.m.)

5 THE COURT: Mr. McCallen.

6 MR. MCCALLEN: Thank you, Your Honor.

7 BY MR. MCCALLEN:

8 Q Dr. Ellson, before you were retained in this matter
9 were you aware that the trustees ran LoanKinetics on a pool
10 of non-liquidated loans that were submitted into the
11 protocol in this case?

12 A That was prior to?

13 Q Prior to your retention are you aware of that?

14 A No, I was not aware.

15 THE COURT: Dr. Ellson, would you pull that mic
16 back towards --

17 THE WITNESS: I'm sorry.

18 THE COURT: -- you, please. Thank you.

19 THE WITNESS: Sorry, Your Honor.

20 BY MR. MCCALLEN:

21 Q So you were not aware that when the trustees ran loan -
22 - the trustees ran LoanKinetics through a pool of loans that
23 are still at issue in this case in 2016?

24 A I was not aware of it when I was initially contacted at
25 the end of the summer in 2016.

1 Q And when you started to do your analysis in June of
2 2017 or -- strike that.

3 When you started to perform your analysis in connection
4 with providing your affirmative report in this case were you
5 made aware that a prior run of LoanKinetics took place in
6 2016 on a similar pool of loans?

7 A I was made aware.

8 Q Okay. Are you aware how many loans it was -- that were
9 in the case and were run through LoanKinetics at that time?

10 A I don't know the exact number. I assumed it was
11 greater than 20,000.

12 Q Does about 20,800 loans, does that sound right?

13 A It sounds reasonable.

14 Q And when you issued your report in this case were --
15 did you ask to get access to the results of that 2016 run of
16 LoanKinetics?

17 A No, I did not.

18 Q So you do not use the results you -- that were obtained
19 from LoanKinetics in 2016 in any way to test the accuracy of
20 the results that you obtained from LoanKinetics in 2017,
21 correct?

22 A Again, what do you mean by testing the accuracy?

23 Q My question is whether you conducted any tests?

24 A No, I did not.

25 Q Are you aware how many loans liquidated between the

1 period of April 2016 when that run of LoanKinetics took
2 place and June -- or April 2017 whenever you calculated the
3 loan position and space (sic)?

4 A From April to April?

5 Q Yes.

6 A '16 to '17, I believe that there were 1,800 loans
7 roughly that terminated or liquidated, I believe liquidated.

8 Q And when you conducted -- strike that.

9 Whenever you submitted your expert report in this case
10 did you look at the performance of those 1,800 loans to see
11 whether it supported or did not support the LoanKinetics
12 valuations being offered to the Court?

13 A No, I did not.

14 Q Now are you also aware that in April of 2016 the
15 trustee -- the trustees also provided the plan administrator
16 a purchase price calculation?

17 A I'm aware that they provided one.

18 Q Okay. And they provided a LoanKinetics valuation for
19 20,000 loans, correct?

20 A I can't speak to that. I don't know what they did.

21 Q Are you aware in this case that Dr. Snow has relied
22 upon your estimated market value in order to calculate the
23 potential damages to the trustees in this case?

24 A Yes. I'm aware of that.

25 Q Okay. And you understand that he took the net purchase

1 price of all of the non-liquidated loans at issue in the
2 case and subtracted your estimated value from that number;
3 is that correct?

4 A The net purchase price would be the purchase price
5 minus my number. My number served as a credit to the plan
6 administrator.

7 Q Okay. So you --

8 A That's my understanding.

9 Q -- you understand that he calculated the purchase price
10 for all of the active loans in the case and then reduced
11 from that amount your estimated market value, and the amount
12 that's left is what the trustees are seeking a recovery for
13 on the non-liquidated loans; is that correct?

14 A I believe that's correct.

15 Q And you understand that -- strike that.

16 (Pause)

17 Q In connection with issuing your report did you check to
18 see how many of the loans that were run through LoanKinetics
19 in 2016 liquidated without a loss subsequently?

20 A No, I did not.

21 Q So you did not consider that information in determining
22 whether LoanKinetics provided a reliable result, correct?

23 A That's correct.

24 Q Dr. Ellson, I would like to take a look at your -- a
25 slide that you testified about this morning during your

1 direct testimony. It's TRDX-352.

2 (Pause)

3 Q Do you recall testifying about this slide this morning?

4 A Yes, I do.

5 Q And I want to take a look at the third bullet point on
6 your slide there. Do you see where it says, and I'm turning
7 into longhand the abbreviations, but current balance times
8 loss severity equals LoanKinetics predicted realized loss.

9 Do you see that?

10 A That's correct.

11 Q And so it was your testimony this morning, correct,
12 that by multiplying the figure in the current balance column
13 times the loss severity column you were able to get an
14 accurate statement of realized loss, correct?

15 A Yes, because all those loans had liquidated.

16 Q So that's correct --

17 A That's correct.

18 Q -- right? Now do you know that Dr. Snow in this case
19 has also done a calculation of realized loss for the
20 trustees?

21 A I don't know.

22 Q Okay. So you don't know that Dr. Snow has done a
23 calculation of realized loss --

24 A I am not aware --

25 Q -- in this case for the trustees?

1 A -- of Dr. Snow's mandate.

2 Q Do you know the formula that he used to calculate
3 realized loss in this case?

4 A No, I don't.

5 Q Do you know whether he used the formula that you used
6 here?

7 A Well, that -- this formula is different because it
8 deals strictly with terminated loans. We know that they --
9 not terminated. We know they liquidated and so this
10 calculation works in that context. If you wanted to broaden
11 this out to loans in general it would be current balance
12 times default rate times loss severity.

13 Q When you say terminated loans you mean liquidated
14 loans?

15 A Liquid -- well, termination can be a number of things.
16 It can be loans that are prepaid or they could be loans that
17 liquidated.

18 Q But it can include liquidated loans, right? A
19 liquidated loan is a terminated loan?

20 A That's correct.

21 Q So it's your testimony that taking the current balance
22 times loss severity is an accurate way to calculate realized
23 loss; is that correct?

24 A For liquidated loans.

25 Q For liquidated loans?

1 A That's correct.

2 Q Do you understand that Dr. Snow used a formula of
3 unpaid principal balance plus interest plus servicer fees to
4 calculate realized loss?

5 A I am not aware of the specific calculation.

6 Q Are you aware whether taking the current balance times
7 loss severity in the LoanKinetics output would always give
8 you the unpaid principal balance plus interest plus servicer
9 fees?

10 A No, it wouldn't include -- it wouldn't include foregone
11 interest and it wouldn't include servicer fees.

12 Q But otherwise the calculations would be the same?

13 A I would have to look at it.

14 Q And you didn't look at it, correct?

15 A No.

16 MR. MCCALLEN: I have nothing further, Your Honor.

17 THE COURT: Okay. Thank you.

18 Ms. Black, anything?

19 MS. BLACK: I believe I am ready to go.

20 THE COURT: Okay.

21 (Pause)

22 MS. BLACK: Can we have TRDX-352, please?

23 REDIRECT EXAMINATION

24 BY MS. BLACK:

25 Q Dr. Ellson, you were just asked by counsel for the plan

1 administrator whether using the formula that we see here
2 which is the current balance times the LoanKinetics
3 predicted loss severity or rather the LoanDynamix predicted
4 loss severity is an accurate way to calculate realized loss
5 for purposes of this proceeding. Do you remember that
6 question?

7 A Yes, I do.

8 Q And just so we are clear, the calculation that we see
9 here, that is the estimated loss in the event of default; is
10 that correct?

11 A That's correct. It's estimated.

12 Q So it's not the actual numbers. What happens in the
13 event of an actual liquidation is just LoanKinetics
14 prediction of what might happen or what loss severity might
15 be in the event that it happens, correct?

16 A That's correct.

17 Q Thank you.

18 Dr. Ellson, if you could please open the binder from
19 the plan administrator and if I could refer you to Tab 4
20 which is Plan Administrator Exhibit 3.

21 (Pause)

22 Q And if we could turn to page 7 of that document which
23 is, I guess, page 9 of 28, sorry, 9 of 28. And within --

24 A Wait a second. I'm sorry.

25 Q Sorry. Yes. Let me know when you're ready.

1 A Page 7?

2 Q It is page 7 of the paper, but it is labeled --

3 A Page 9 of 28.

4 Q -- page 9 of 28.

5 A Okay. I'm there.

6 Q And I will refer you to the paragraph that you were
7 examined about by Mr. McCallen. In this paper by ADCO
8 regarding LDM validation it says, "ADCO provides recommended
9 tunings for LDM on its website by loan type." Do you see
10 that?

11 A Yes, I do.

12 Q And just so we are clear LDM refers to LoanDynamix?

13 A Yes.

14 Q And the recommended tunings from ADCO is what you used
15 for purposes of your analysis, correct?

16 A That's correct.

17 Q And as far as you are aware Professor Fischel also used
18 those recommended ADCO tunings for LoanDynamix when he ran
19 his analysis?

20 A As far as I know, yes.

21 Q And, again, just so we are clear Professor Fischel used
22 LoanDynamix to estimate future losses on the very loans that
23 you calculated a market value for, correct?

24 A Yes. That's true.

25 Q And the purpose for which he used LoanDynamix

1 calculating future losses is the same purpose that you used
2 LoanDynamix for within LoanKinetics?

3 A That's true.

4 Q And he felt comfortable relying on those ADCO
5 recommended values?

6 MR. MCCALLEN: Objection. Foundation.

7 MS. BLACK: Okay.

8 THE COURT: You want to lay the foundation for that
9 last question?

10 MS. BLACK: I'm going to withdraw it.

11 THE COURT: Okay.

12 BY MS. BLACK:

13 Q Moving on to Plan Administrator Exhibit 11 which is in
14 Tab 12 of the binder.

15 So this document contains the ADCO recommended tunings
16 for LoanDynamix, correct?

17 A That's correct.

18 Q That's what we saw being referred to in the paper that
19 we just looked at?

20 A Yes.

21 Q And these are the tunings that you relied on for
22 purposes of your analysis?

23 A That's correct.

24 Q And, again, as far as you are aware it's this -- these
25 very tunings that Professor Fischel also relied on for

1 purposes of his analysis using LoanDynamix?

2 A Yes.

3 MR. MCCALLEN: Objection. Your Honor, can we
4 approach for one second?

5 THE COURT: Yes.

6 (Sidebar off the record)

7 BY MS. BLACK:

8 Q Have you seen any evidence put forward by any of the
9 plan administrator's experts suggesting that the recommend -
10 - the LoanDynamix -- let me rephrase that.

11 Have you seen any evidence put forward by the -- any of
12 the plan administrator's experts showing that the ADCO
13 recommended tunings for LDM are inappropriate or inaccurate
14 in any way?

15 A No, I have not seen any.

16 Q And we've heard a lot --

17 THE COURT: Apologies.

18 BY MS. BLACK:

19 Q We've heard a lot about tuning today. I just want to
20 make sure that we have the basics down. So can you just
21 explain briefly what does tuning mean? What does tuning and
22 model mean?

23 A Tuning means you're making an adjustment to reflect
24 idiosyncratic conditions. For example, as I pointed out on
25 several occasions there are dozens of loan types and these

1 were done over a multiple of origination years under varying
2 underwriting circumstances. Tunings are used to account for
3 some of the errors that might be developed in terms of some
4 of these loan categories. Again, it's -- there are dozens
5 of loan categories. This is a widespread tool.

6 Q And does --

7 THE COURT: Can I --

8 MS. BLACK: Uh-huh.

9 THE COURT: -- interrupt and ask a very narrow
10 question.

11 So, for example, an idiosyncrasy that you could
12 tune for -- this is a question, I have no idea -- would be
13 to account for something like a natural disaster in Houston
14 that would have a -- an idiosyncratic effect on, to your
15 point much earlier today, kind of a microgeographic area of
16 homes?

17 THE WITNESS: That's correct, Your Honor. It
18 definitely would be used to adjust for an event like that.

19 THE COURT: Okay. Thank you.

20 MS. BLACK: I believe I have one last question.

21 BY MS. BLACK:

22 Q Does tuning and model mean that there is anything
23 fundamentally wrong, that there is a fundamental flaw with
24 the core algorithm of the model?

25 A No. Tunings are again commonly done. It's a practice

1 and it indicates nothing is wrong with the core of the
2 model.

3 Q Thank you.

4 MS. BLACK: I don't have any further questions --

5 THE COURT: Thank --

6 MS. BLACK: -- at this time.

7 THE COURT: Thank you.

8 Mr. McCallen.

9 MR. MCCALLEN: Nothing further, Your Honor.

10 THE COURT: Very good.

11 Dr. Ellison, thank you very much.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: You are excused. Please enjoy the rest
14 of your day. Thank you for your patience and good will here
15 today, good humor.

16 THE WITNESS: Thank you.

17 THE COURT: Okay. So what are we doing next?

18 MR. SHUSTER: Next we'll have Mr. Finkel --

19 THE COURT: Okay.

20 MR. SHUSTER: -- who is present in the courtroom.

21 Ms. DeLucia will conduct Mr. Finkel's examination. We'll --
22 if we can just have a few minutes to set up we'll be ready
23 to go.

24 THE COURT: Okay. Could I ask a collection of you
25 to come up?

1 (Laughter)

2 UNIDENTIFIED SPEAKER: Yes.

3 (Sidebar off the record)

4 (Recess taken at 2:52 p.m.; reconvened at 3:23 p.m.)

5 THE COURT: All right. Please everyone have a
6 seat. Thank you for your patience.

7 Ready when you are.

8 MS. DELUCIA: Good afternoon, Your Honor. The
9 trustees would like to call James Finkel.

10 THE COURT: Okay. Mr. Finkel, come on up.

11 MS. DELUCIA: And we have some books and --

12 THE COURT: Okay.

13 MS. DELUCIA: -- (indiscernible).

14 THE COURT: Hello. How are you, sir? Please step
15 up. Would you raise your right hand, please?

16 JAMES K. FINKEL, WITNESS, SWORN

17 THE COURT: Very good. Have a seat. Make --

18 THE WITNESS: Thank you.

19 THE COURT: -- yourself comfortable. Adjust the
20 mic so we can hear you.

21 THE WITNESS: Sure.

22 THE COURT: And if you would like to take a break
23 at any time please let us know. You do not need to wait for
24 one of the lawyers to ask you.

25 THE WITNESS: Okay.

1 THE COURT: Okay. Thank you.

2 DIRECT EXAMINATION

3 BY MS. DELUCIA:

4 Q Good afternoon, Mr. Finkel.

5 A Good afternoon.

6 Q Do you understand you are here to testify today as an
7 expert on behalf of the trustees?

8 A I do.

9 Q Can you turn to TRDX-370, please?

10 (Pause)

11 Q Mr. Finkel, is TRDX-370 a summary of your educational
12 background?

13 A It is.

14 Q Would you mind walking the Court through your
15 educational background beginning with after high school and
16 continuing to any post-graduate work, please?

17 A Sure. I obtained my bachelor of arts in international
18 political economy from Colorado College in 1982, and I went
19 directly on to graduate school at the London School of
20 Economics. I received a master's of science in 1983 in
21 international politics. I went right from the LSE to the
22 University of Miami law school, graduated in 1986 with
23 honors, served on the law review, and then as a young
24 associate working at a law firm here in New York. At night
25 I studied and obtained my LOM in taxation which I received

1 in 1990 from NYU.

2 Q And broadly speaking can you describe for the court the
3 nature of your work history over the past 30 years? We'll
4 talk about the specifics in a moment. If you could just
5 give the Court a sense of the kind of work you've been
6 engaged in.

7 A Sure. I've been affiliated or associated with complex
8 fixed income securities pretty much my whole 30 year career.
9 I began my career as a tax associate at (indiscernible)
10 mainly working on mortgage backed securities deals. Then I
11 was a banker for 12 years at three investment banks and also
12 one small broker/dealer, again mainly working in mortgage
13 backed securities, residential mortgage backed securities
14 and other securitized products. I spent five years in
15 London as a securitization banker.

16 And then the next phase of my career I started and co-
17 founded an investment management firm which largely invested
18 in residential mortgage backed securities. I ran that for
19 seven years, converted it to a consulting business and then
20 sold that consulting business to Duff & Phelps where I've
21 been acting as a managing director in largely fixed income
22 and capital markets consulting for the last seven years.

23 Q Mr. Finkel, can you describe your experience in terms
24 of RMBS and securitized products specifically, please?

25 A Sure. I was firm introduced to this product in 1987.

1 As a tax lawyer I worked on about 350 mortgage backed
2 securities transactions analyzing the cash flows and the
3 capital structures. I was very intrigued with the business
4 side of the product and was fortunate enough to get a job in
5 (indiscernible) securities where I actually had three roles
6 in mortgage finance. I was our banker and transaction
7 manager for all of our agency residential mortgage backed
8 securities as well as the private label issuances. I worked
9 on the secondary market desk obtaining distressed mortgages
10 and mortgage securities and repackaging them. And finally I
11 ran a mortgage origination finance facility where we
12 actually lent money to mortgage originators against their
13 production which eventually were turned into mortgage backed
14 securities.

15 And I was there for about three years, two and a half
16 years, went to a small broker/dealer where I almost
17 exclusively worked in sales and trading of some of the most
18 complex residential mortgage backed securities and also did
19 some advisory work for some government agencies. And then I
20 was at Bear Stearns for five years working on a variety of
21 securitized products, both residential mortgage backed
22 securities, but also CDOs and CLOs involving high yield debt
23 and emerging market debt, European bank debt.

24 I went to Europe as the Euro currency came into effect
25 and started developing securitized products in the Euro

1 currency in 1998 and 1999 and did that for five years,
2 returning to the U.S. in 2003 where I started the money
3 management business. And there I got deeply involved again
4 with residential mortgage backed securities. As now a
5 buysider (sic) we ended up running about five billion of
6 investments, four billion of which were residential mortgage
7 backed securities.

8 And as the consulting business -- side of that business
9 ended up growing we ended up analyzing approximately 50
10 billion residential mortgage backed securities as
11 consultants. I led many of those projects. And then
12 finally as the consulting business was acquired by Duff &
13 Phelps I ran a valuation group for a year which valued
14 mortgage loans and mortgage backed securities, and then for
15 the last five or six years at Duff & Phelps I've been
16 chiefly doing litigation consulting and testifying.

17 I still do -- I would say about 20 percent of my time I
18 still do transactional business as well.

19 Q And the consulting business you referred to before Duff
20 & Phelps, that was at Dynamic (sic) Credit Partners; is that
21 right?

22 A That's correct.

23 Q And in 2010 Duff & Phelps acquired Dynamic Credit; is
24 that right?

25 A That's right.

1 Q Are you currently employed at Duff & Phelps?

2 A I am.

3 Q What's the nature of your work at Duff & Phelps today?

4 A Today, again, predominantly I work as a consultant and
5 testifier in a wide variety of largely capital -- financial
6 crisis related disputes involving complex securities or
7 asset management issues. Sometimes they may involve post-
8 M&A disputes. They can -- I've worked on some international
9 projects as well regarding securitized product. And as I
10 said about 20 percent of time I do transactional business
11 trying to land advisory work or liquidation business.

12 Q And the Court is obviously familiar with Duff & Phelps,
13 but can you give the Court a sense of Duff & Phelps'
14 global business generally?

15 A Sure. It's become since I've been there seven years
16 quite a large firm. We have about 2,500 employees now.
17 We're considered the largest valuation firm, independent
18 valuation firm in the world. We also have investment
19 banking business with sale side advisory, fairness opinions,
20 solvency opinions. We have a real estate practice, a tax
21 practice, and a fairly extensive disputes and investigations
22 practice which is also global ranging from forensic work
23 through consulting and testifying in commercial disputes.

24 Q Mr. Finkel, during the course of your career have you
25 had occasion to use financial models?

1 A Yes, I have.

2 Q What kinds of financial models?

3 A I've used both what I call off the shelf financial
4 models as well as proprietary models. Some of the earliest
5 models that I worked with go back to pre-Excel. They go
6 back to Lotus 1-2-3 that I worked on as a tax lawyer in the
7 80s. But when I was a financial professional on Wall Street
8 I often used Bloomberg in the early days to run a variety of
9 cash flows on RMBS. I worked with other systems such as
10 Wall Street analytics.

11 I developed my own tax models for RMBS and ran those.
12 I've worked with TREP on commercial mortgage backed
13 securities. I -- the investment banks, we had proprietary
14 models such as yield book or HYDRA that the investment banks
15 developed.

16 Ultimately I ended up working with Intex which became
17 the predominant off the shelf model for RMBS and CDOs, and
18 I've also worked with the Andrew Davidson models.

19 Q And for what purposes have you generally used financial
20 models?

21 A Generally to either assess risk -- risk metrics or to
22 conduct valuations. Generally, you know, running cash flows
23 using different credit assumptions, discounting them back to
24 -- for market-clearing yields for valuation purposes.
25 Sometimes we use models for hedging purposes. And largely -

1 - and also sometimes for portfolio analytics, for group
2 analytics.

3 Q And you mentioned the Andrew Davidson & Co models.
4 Have you -- and if I refer to those as ADCO you'll
5 understand what I mean?

6 A Yes.

7 Q Have you found the ADCO models to be reliable?

8 A I have.

9 Q Have you found that the ADCO models are used routinely
10 in the RMBS industry?

11 A You know, ADCO's own advertising through its website
12 and other publications indicate that it's widely used. I
13 think as an industry participant for the last 25 years I
14 know anecdotally of a lot of entities, financial entities
15 and market participants that have used ADCO as well.

16 Q Mr. Finkel, have you ever been invited to lecture to
17 various audiences?

18 A I have.

19 Q And to which audiences and on what subject matters have
20 you lectured?

21 A I've lectured quite often on capital markets and
22 complex securities issues, both at industry conferences and
23 to academic groups, whether graduate or undergraduate.

24 Q Are you licensed by any professional boards or bars,
25 sir?

1 A I am.

2 Q Which professional boards or bars?

3 A Excuse me. I'm a Series 52 registered representative
4 with FINRA so I can offer and execute on private placements,
5 dead instruments and certain equities. I'm also a member of
6 the bar since 1987, although I have inactive status. I'm a
7 member of the Academy of Economic and Financial Experts.

8 I'm also a former member of the American Securitization
9 Forum and the Alternative Investment Management Association.

10 Q Mr. Finkel, have you previously testified as an expert
11 witness?

12 A I have.

13 Q Have you been qualified by any courts to testify as an
14 expert witness?

15 A I have been.

16 Q Which courts have qualified you to testify as an expert
17 witness?

18 A I have been qualified in U.S. Federal Court Southern
19 District. I have been qualified in U.S. Federal Bankruptcy
20 Court Southern District, this court --

21 THE COURT: Really?

22 THE WITNESS: Yes. In the --

23 (Laughter)

24 THE WITNESS: -- in the GSC matter --

25 THE COURT: Yes.

1 THE WITNESS: -- about three years ago.

2 THE COURT: Thank you for reminding me.

3 (Laughter)

4 THE WITNESS: And I've been qualified in New York
5 State Supreme Court, Connecticut State Court, Delaware
6 Chancery Court and Federal Court in Australia.

7 BY MS. DELUCIA:

8 Q And approximately how many times have you testified as
9 an expert witness?

10 A In courtroom testimony six times.

11 Q And have you testified in any arbitration proceedings?

12 A Yes, I have.

13 Q And how many times have you testified in court --
14 excuse me -- in arbitration proceedings as an expert?

15 A I believe four times.

16 Q What were the subject matters of the engagements where
17 you've testified as an expert witness, sir?

18 A In many of the cases it involved residential mortgage
19 backed securities or CDOs backed by residential mortgage
20 backed securities. Often they involved damages estimation
21 or loss estimation. I also have testified on synthetic CDOs
22 and CLOs as well as CMBS. But virtually all of them
23 securitized product related.

24 MS. DELUCIA: Your Honor, the trustees would like
25 to tender Mr. Finkel as an expert on the subject of running

1 financial models for the purposes of deriving recovery
2 ratios for RMBS elements.

3 THE COURT: Mr. Cosenza.

4 MR. COSENZA: Your Honor, we have no objection.

5 And, also, Jonathan Waisnor, who is an associate at Willke,
6 is going to be conducting the cross.

7 THE COURT: Okay.

8 MR. COSENZA: So just to follow Your Honor's rules
9 he's going to be doing any objections during the
10 examination.

11 THE COURT: Okay.

12 MR. COSENZA: He'll be --

13 THE COURT: Sounds good.

14 MR. COSENZA: He'll be the one.

15 THE COURT: Very good.

16 MR. COSENZA: Thank you.

17 THE COURT: Okay. All right.

18 MS. DELUCIA: Thank you.

19 BY MS. DELUCIA:

20 Q Mr. Finkel, did you submit a report in connection with
21 this proceeding?

22 A I did.

23 Q And would it be helpful for purposes of your testimony
24 today to have a copy of that report handy?

25 A Yes, it would be.

1 Q You have a binder in front of you. Would you mind
2 flipping to TRX-649, please, sir?

3 A Okay.

4 (Pause)

5 Q Mr. Finkel, is TRX-649 a copy of the report that you
6 submitted in this proceeding?

7 A Yes. It's a copy of the body of the report. I think
8 the exhibits follow in the binder.

9 Q Okay. Let's discuss the opinions that you're offering
10 here.

11 MS. DELUCIA: Can you show TRDX-372, please?

12 BY MS. DELUCIA:

13 Q Mr. Finkel, please take a look at TRDX-372. Is this a
14 summary of your opinions that you're offering here today?

15 A Yes, it is.

16 Q Can you walk us through them briefly understanding that
17 we'll return to them in greater detail in a few moments,
18 please?

19 A Sure. As numbered here I've provided four separate
20 opinions. My first task was to reconcile the lifetime
21 losses of the Lehman loans that Professor Fischel conducted
22 using the same Andrew Davidson LoanDynamix model that he
23 used on the non-liquidated portion of the Lehman loans. And
24 I effectively tied out to his methodology and his numbers
25 following his -- what I derive to be his methodology.

1 I then made certain corrections to the data that
2 Professor Fischel used to more accurately project and create
3 an independent projection of the lifetime losses using the
4 same ADCO LDM toolkit. I came out with a slightly different
5 number, a slightly lower loss number than Professor Fischel.

6 I then used the same ADCO model and the same
7 methodology to derive projected losses for the non-
8 liquidated loans held in other RMBS trusts, certain other
9 RMBS trusts that had litigation settlements, and then using
10 those independently derived estimated lifetime losses I
11 compared the settlement amounts in those cases to those
12 lifetime losses and derived recovery ratios from -- from
13 those other settlements. I -- the ranges stated here that I
14 arrived at in those recovery ratios.

15 And then finally I applied that range of recovery
16 ratios to the estimated lifetime losses for the Lehman loans
17 that I had calculated and came up with an amount, a
18 benchmark settlement amount of approximately 2.5, \$2.6
19 billion higher than the claim administrator -- the plan
20 administrator's proposed claim amount.

21 Q Thank you.

22 Mr. Finkel, did you review a report submitted by
23 Professor Fischel on behalf of the plan administrator in
24 connection with this case?

25 A I did.

1 Q And as they pertain to your opinions here what's the
2 nature of Professor Fischel's opinions?

3 A Well, pertinent to my opinions Professor Fischel took
4 certain RMBS litigation settlements and used the recovery
5 ratios that he derived from those matters and applied it to
6 his estimate of lifetime losses of the Lehman loans in an
7 attempt to demonstrate whether the proposed claim amount of
8 the plan administrator was in line with some other
9 settlements that he chose.

10 Q And do you know how Professor Fischel went about
11 calculating a recovery ratio for the RMBS settlements that
12 he identified?

13 A Yes. He had to do what you always do to determine
14 lifetime losses. You combine historic losses plus projected
15 losses.

16 So for the first component he took Dr. Snow's historic
17 losses on a portion of Lehman loans that Dr. Snow had
18 calculated and then he referred to some other data to pick
19 up the remaining lifetime losses of the other loans that Dr.
20 Snow had not addressed.

21 And then for the second component for his -- Professor
22 Fischel's projected losses he used the LoanDynamix model and
23 in so doing projected losses for the loans and added those
24 two components up for a total lifetime loss amount. And
25 then, you know, derived a recovery ratio off that.

1 Q And how do you know that Professor Fischel used the
2 ADCO LDM model in calculating projected losses?

3 A Well, it was evident in his production of the data
4 inputs that were provided in production as well as some of
5 the outputs from the LDM model. We were familiar -- I and
6 my team were familiar with the LDM model and we could tell
7 that that's what was used and I understand that that's been
8 confirmed that that is what he -- the model he, in fact, did
9 use.

10 Q Let's look at TRX-649 which is your report in this
11 proceeding, and particularly to paragraph 17 and Footnote 2,
12 please.

13 Does that reflect your understanding of how Professor
14 Fischel calculated projected losses in this proceeding?

15 A Yes. As I mentioned this would be the second component
16 in the calculation of total lifetime projected losses. The
17 projected losses that Professor Fischel calculated were
18 different than the ones I independently calculated. I
19 believe that's largely due to Professor Fischel or his team
20 using a one-month different ADCO default tuning parameters
21 than what should have been used. His calculation date was
22 as of April 2017 and he should have used the April 2017
23 tuning parameters.

24 I couldn't tie out to the numbers using those tuning
25 parameters because I went one month forward and then got

1 very, very close to his numbers and that's how I assumed
2 that he was just a month off using the tuning parameters.
3 But we were quite close, you know, within about, you know,
4 1.2 percent difference.

5 Q And so using the May 2017 tuning parameters were you
6 able to replicate basically Professor Fischel's projected
7 losses for the non-liquidated loans in this case?

8 A Yes, to a very, very close number.

9 Q And did you take any steps to independently calculate
10 what the projected losses were using the April 2017 default
11 tuning parameters, sir?

12 A Yes. As I mentioned and as the footnote states through
13 the independent projection I made using the April tuning
14 parameters I came up with a slightly larger amount of
15 expected future losses than Professor Fischel.

16 Q And what's the number that you arrived at when you did
17 that independent calculation?

18 A 1.454 billion as --

19 Q And how --

20 A -- opposed to Professor Fischel's 1.437. Excuse me.

21 Q Mr. Finkel, did you perform another calculations
22 concerning the non-liquidated loans at issue in this case?

23 A Yes, I did.

24 Q And what did you do?

25 A Well, the data inputs that I observe from Professor

1 Fischel that had to go into the LDM model had certain
2 errors, four predominant ones. So I corrected those errors
3 having independently reviewed the data and ran those through
4 the model independently to come up with a different
5 estimated projected loss.

6 Q And are those four corrections that you made reflected
7 anywhere in your report, sir?

8 A They are. They are listed in Exhibit 1.

9 Q If you would turn in your binder to TRX-652, please.
10 Is that Exhibit 1 to your report, sir?

11 A That is.

12 Q Can you walk the Court through the differences in the
13 data fields that you used as compared to the fields that
14 Professor Fischel used?

15 A Sure. The first data field as titled the coupon type
16 really reflects whether the loans were of a fixed or
17 floating rate. And for about 8,000 loans Professor Fischel
18 had it backwards. He classified about 2,700 fixed rate
19 loans as floating and 5,400 floating rate loans as fixed.
20 So I just corrected those to what the actual coupon type was
21 and reset the data in that regard.

22 The second category was the actual numeric coupon
23 itself, and that really was more of a transcription error on
24 Professor Fischel or his team's part where about 1,400 loans
25 were -- had a mis-expressed coupon sometimes varying by a

1 couple of decimal places. So my team and I corrected that
2 as well.

3 The third correction was the modification of the term
4 of the loan. As many, many loans were restructured or
5 renegotiated their terms were extended and it appeared that
6 Professor Fischel's team or he did not pick up those
7 modifications in about 20,000 loans. And I extended the
8 term correctly to the modified date on those 20,000.

9 And then finally the loan balances needed to be
10 corrected on about 13, almost 14,000 loans. There was quite
11 a lot of forbearance loans where a certain principal amount
12 was effectively forgiven and with those the loss severity is
13 obviously a hundred percent because it's effectively a
14 write-off. And my observation was that Professor Fischel
15 had not picked that up and had left those amounts on the
16 loan balances so he to some extent understated the loss
17 severity of those loans. So we corrected that as well.

18 Q Now, Mr. Finkel, what would be the effect, if any, of
19 Professor Fischel using inaccurate inputs like those
20 reflected in your corrections in TRX-652 and his
21 calculations of the lifetime losses?

22 A Well, in the aggregate it caused Professor Fischel to
23 overstate the losses, the lifetime losses, and effectively
24 overstate the -- in particular the projected losses for
25 these loans.

1 Q And what would be the effect of an overstatement of
2 lifetime losses on the recovery ratio that Professor Fischel
3 calculated for the loans at issue in this case?

4 A Right. Well, if you have an overstated lifetime loss
5 amount and you apply the same settlement amount to it,
6 you're going to have an understated recovery ratio.

7 Q Let's turn back to your report which is TRX-649,
8 please, and in particular we'll look at paragraph 34.

9 A Okay.

10 Q Does this reflect the calculations you performed for --
11 to arrive at the projected losses related to non-liquidated
12 loans in this action?

13 A Yes.

14 Q And is this the methodology that in your report you
15 refer to as the Finkel ADCO method?

16 A Yes. I'm not sure ADCO would like having me call it
17 that, but that's what I call it.

18 Q We'll put a little TM for --

19 A Yeah.

20 Q Let's move down a little bit on the page to paragraph
21 36. Did you also perform a calculation of the historic
22 losses relating to liquidated loans in this proceeding?

23 A Yes.

24 Q And what was the result of those calculations?

25 A I have a slightly different number than Professor

1 Fischel's calculation of historic losses. And my number is
2 slightly higher by almost \$17 million.

3 Q And how did you derive at your total number for
4 historic losses?

5 A The historic losses as I mentioned were kind of a two-
6 part process. One was picking up Dr. Snow's losses on the
7 loans he analyzed, and then for the remaining loans I used
8 the losses as reflected in servicer data from Nationstar and
9 Wells Fargo.

10 Q And looking at paragraph 37, sir, did you perform any
11 calculations to arrive at the total lifetime losses for the
12 loans at issue in this proceeding?

13 A Yes. So I took --

14 Q And did -- sorry.

15 A -- the historic losses we just talked about and --
16 which I independently calculated with my independently
17 calculated projected losses and came to a total estimated
18 loss -- lifetime loss number of \$21.115 billion.

19 Q And how does your total estimated lifetime losses
20 compare to what -- the number that Professor Fischel arrived
21 at for lifetime losses?

22 A It's approximately \$50 million lower than Professor
23 Fischel.

24 Q Mr. Finkel, let's discuss the other put back
25 settlements that you identified in your report. If we could

1 turn to page 10 of 12 using the TRX numbers at the bottom of
2 the page.

3 A Yes.

4 Q And look at the table at the top of the page. Does
5 this table identify the settlements that you evaluated, sir?

6 A Yes, it does.

7 Q And can you explain for the Court what your evaluation
8 of these settlements entailed?

9 A Sure. I looked at a couple of different things.
10 Obviously the trustee notice of settlement and I picked up a
11 few things from that, the dollar amounts of the settlements
12 as reflected here, the settlement dates as reflected here,
13 and the -- and the loan groups involved in those.

14 I then independently took the loans in those loan
15 groups and ran them through the ADCO model to estimate their
16 projected losses and I added that to their historic losses
17 that I had picked up from servicer data to come up with a --
18 again, an estimated lifetime loss using the same ADCO LDM
19 toolkit and methodology consistent with what I did with the
20 Lehman loans.

21 From one of the transactions I actually didn't need to
22 calculate an estimated lifetime loss because it was
23 presented in the trustee notice.

24 Q And which transaction was that which had the lifetime
25 losses presented in the notice?

1 A That's footnoted in Footnote 11 as the GEWMC 061
2 transaction.

3 Q Now why did you need to calculate lifetime losses for
4 these trusts for which there had been settlements?

5 A Well, they weren't present as they were -- it wasn't
6 presented, the number of lifetime losses wasn't presented in
7 the trustee notice or anywhere else. So the only way to
8 come up with a recovery ratio for these settlements would
9 have required an independent calculation of expected
10 lifetime losses.

11 Q Now did you calculate the estimated lifetime losses for
12 these trusts for which there had been settlements as of any
13 particular date?

14 A Yes. In fact, I calculated it as of two dates, one
15 being the same calculation date as Professor Fischel used in
16 April of 2017, but also I used the month that those RMBS
17 litigations actually settled.

18 Q Now let's look at your report, TRX-649 and at page 11
19 of 12. There are two tables for the top of that page. Do
20 these tables from your report reflect your calculations of
21 the lifetime losses for these trusts?

22 A Yes.

23 Q And did you perform any further calculations beyond
24 determining the lifetime losses for these trusts that were
25 the subject of settlements?

1 A Yes, I did. I then divided those expected lifetime
2 losses by the settlement amounts to arrive at recovery
3 ratios.

4 Q And what did your calculations yield in terms of the
5 range of recovery ratios for these trusts for which there
6 had been settlements?

7 A Well, I came up with a range as presented here from 23
8 percent recovery ratio to 23.75 percent.

9 Q And how does that range compare to Professor Fischel's
10 recovery ratio for the Lehman proposed allowed claim in this
11 proceeding?

12 A This 23 to 23.75 percent is substantially higher than
13 Professor Fischel's 11.24 percent and it's consistently
14 higher looking at the tight range across these six
15 settlements.

16 Q If you could turn to page 12 of 12 of your report, sir,
17 and turn our attention to the table at the top of that page,
18 did you do anything else with respect to the recovery ratios
19 that you calculated for the other trusts for which there had
20 been settlements?

21 A Yes, I did. I took those derived recovery ratios and
22 then I applied them to the estimated lifetime losses that I
23 had independently derived for the Lehman loans. And in so
24 doing I arrived at a benchmark settlement amount, applying
25 any one of the six recovery ratios as listed on this -- on

1 this table. And I also showed the difference between that
2 new benchmark settlement amount using these recovery ratios.
3 I showed the excess over the plan administrator's proposed
4 claim amount.

5 Q And what did that excess show?

6 A It showed a range of approximately 2.475 billion to two
7 point almost seven billion dollars of excess over the plan
8 administrator's proposed claim amount.

9 Q Mr. Finkel, are you familiar with a recent RMBS put
10 back case that was tried before Judge Castel in the Southern
11 District of New York?

12 THE COURT: Yes, Mr. Waisnor.

13 MR. WAISNOR: Your Honor, this -- I think we're
14 going to get into the (indiscernible) settlement that wasn't
15 disclosed to us and I asked Mr. Finkel at his deposition --

16 THE COURT: Going to get into the I'm sorry, I
17 didn't hear the words?

18 MR. WAISNOR: We're going to -- I'm sorry, Your
19 Honor. We're going to get into the calculation of the
20 recovery ratio for a settlement that was not disclosed in
21 Mr. Finkel's report. And I actually asked him at his
22 deposition whether he had calculated any recovery ratios for
23 any additional settlements that weren't in his report and he
24 said he had not.

25 MS. DELUCIA: Your Honor, with all due respect to

1 the --

2 THE COURT: Yeah.

3 MS. DELUCIA: -- notice, the public notice
4 pertaining to the MARM settlement amount came out on the day
5 of Mr. Finkel's deposition. He could not have testified
6 about it at that time.

7 THE COURT: Okay. But that doesn't cure the
8 problem that he can't offer a new opinion here today without
9 counsel having had an opportunity to test it before today.

10 MS. DELUCIA: For purposes of the MARM settlement
11 actually Mr. Finkel did not calculate the recovery ratio.
12 The recovery ratio is presented in a public document. He's
13 actually just doing the same math that he did to derive a
14 benchmark settlement amount.

15 THE COURT: Come on up.

16 (Sidebar off the record)

17 THE COURT: Okay. I'm sure that Mr. Finkel can't
18 remember the question. It has to do with MARM. So, Ms.
19 DeLucia, if you could repeat the question, please.

20 MS. DELUCIA: I don't remember the question myself.

21 THE COURT: You asked if Dr. -- if Mr. Finkel --

22 MS. DELUCIA: Yeah.

23 THE COURT: -- was familiar with the settlement and
24 litigation before Judge Castel involving the loans
25 affectionately known as MARM.

1 MS. DELUCIA: Your Honor is --

2 THE COURT: Right?

3 MS. DELUCIA: -- more on the ball --

4 THE COURT: Okay.

5 MS. DELUCIA: -- than I am.

6 (Laughter)

7 BY MS. DELUCIA:

8 Q Mr. Finkel, can you answer the Court's question?

9 MR. WAISNOR: I just want to state for the record -
10 -

11 THE COURT: Yes.

12 MR. WAISNOR: -- that this settlement has not been
13 disclosed as part of Mr. Finkel's opinion. We have not had
14 a chance to test any of the assumptions. We frankly just
15 got it today in the binder and we would just like to put
16 that on the record. Given some considerations I understand,
17 you know, the --

18 THE COURT: All right.

19 MR. WAISNOR: -- (indiscernible).

20 THE COURT: Ms. DeLucia is going to be permitted to
21 ask Mr. Finkel a limited number of questions about this that
22 do not in any way seek to elicit any analysis of the numbers
23 that may be apparent in reading public documents in the MARM
24 case.

25 MS. DELUCIA: Understood.

1 THE COURT: Okay.

2 BY MS. DELUCIA:

3 Q Mr. Finkel, what's your understanding of the MARM case,
4 just generally?

5 A It's an RMBS put back action.

6 Q Have you reviewed any notices to holders in connection
7 with the MARM case, sir?

8 A I have.

9 Q And are the notices to holders that you've reviewed
10 available publicly?

11 A Yes.

12 Q Where are they available?

13 A On CTS link.

14 Q And what is CTS link?

15 A It's a website that's supported by Wells Fargo that
16 anybody can log in after they make certain representations,
17 but anyone can log in. And once you're in you can access a
18 variety of reports and notices regarding a large number of
19 mortgage backed securities transactions.

20 THE COURT: Yes.

21 MR. WAISNOR: Your Honor, I just want to object and
22 say I'm not sure this is publicly available, but if you need
23 to make representations --

24 THE COURT: Is it --

25 MR. WAISNOR: -- (indiscernible) --

1 THE COURT: Is it a publicly available document in
2 that I could go on the PACER website and get it --

3 THE WITNESS: I --

4 THE COURT: -- because that's not --

5 THE WITNESS: You can go in -- yes, on the CTS
6 website and get it. When I said you make representations,
7 you just have to click I accept like with many websites, but
8 --

9 THE COURT: But is it a -- is it a document that's
10 filed in a court somewhere?

11 THE WITNESS: That I'm unaware of. It's publicly
12 available through the -- the CTS website is a business
13 website, not a legal website as far as I know.

14 MR. WAISNOR: I just have some -- a little bit of
15 knowledge of this. This -- I mean, I think you have to
16 create an account and have a password and just log in.

17 THE COURT: Okay.

18 MR. WAISNOR: I think -- I don't think this is --

19 THE COURT: Unless this is a --

20 MR. WAISNOR: -- publicly available. I was given
21 to understand that this was on a docket somewhere.

22 THE COURT: That's what -- when I -- I was
23 operating under the assumption that it was on a docket.
24 That's in the sense that I was assuming that it was publicly
25 available. If it's not on a docket, then we're not going to

1 have questions about it.

2 MS. DELUCIA: It is not on a docket --

3 THE COURT: Okay.

4 MS. DELUCIA: -- as far as I know.

5 THE COURT: All right. Then I think we're going to
6 move on.

7 MS. DELUCIA: Okay.

8 MR. WAISNOR: Thank you, Your Honor.

9 (Pause)

10 MS. DELUCIA: I think we'll conclude our direct.

11 THE COURT: Okay. Thank you.

12 Mr. Waisnor, are you ready to start right in or do
13 you need a few minutes?

14 MR. WAISNOR: Just like a minute or two to get set
15 up, Your Honor.

16 THE COURT: Okay.

17 MR. WAISNOR: So --

18 THE COURT: I'm going to stay put if you don't
19 mind.

20 MR. WAISNOR: Oh, no worries.

21 Can Mr. Berns approach and hand up some binders?

22 THE COURT: Sure.

23 MR. WAISNOR: Thank you.

24 (Pause)

25 THE COURT: Ready when you are.

1 MR. WAISNOR: May I proceed?

2 THE COURT: Please.

3 CROSS-EXAMINATION

4 BY MR. WAISNOR:

5 Q Good afternoon, Mr. Finkel.

6 A Hello, Mr. Waisnor.

7 Q We're going to put up on the screen now a chart from
8 page 29 of Professor Fischel's rebuttal report which is Tab
9 2 of your binder, Plan Administrator Exhibit 82.

10 A Okay.

11 Q So you're familiar with this chart, correct?

12 A Yes.

13 Q And in the first row on this chart, Column D, that sets
14 forth Professor Fischel's estimated expected lifetime losses
15 for the approximately 15 -- 415,000 loans and 235 trusts at
16 issue in this case; is that correct?

17 A Correct.

18 Q Okay. And Professor Fischel calculated those expected
19 lifetime losses to be \$21.165 billion, correct?

20 A Correct.

21 Q And one part of your assignment here was to recreate
22 Professor Fischel's calculation of expected lifetime losses;
23 is that right?

24 A Yes.

25 Q And you calculated the expected lifetime losses for the

1 loans and the trusts that are involved in this case as
2 \$21.115 billion, correct?

3 A I think that's correct. If I can just quickly refer to
4 that number, but I --

5 Q Of course.

6 A It sounds right.

7 (Pause)

8 A That's correct.

9 Q Okay. So you were able to replicate Professor
10 Fischel's expected lifetime loss calculations to within a
11 very small difference; is that right?

12 A Within \$50 million on 21 billion, yes.

13 Q Is that a very small difference in your mind?

14 A It's all relative depending on who's involved. To me
15 \$50 million is a lot of money, but it's -- as a percentage
16 of 21 billion it's very -- it's a small percentage.

17 Q Okay. Generally the estimated lifetime loss number is
18 just the sum of projected losses and historic losses; is
19 that right?

20 A Correct.

21 Q And you calculated that 19.745 billion of the estimated
22 lifetime losses were historical losses; is that correct?

23 A Correct.

24 Q And historical losses are just another way of saying
25 the reported realized losses after liquidation of the loans,

1 correct?

2 A Correct.

3 Q And realized losses of the loan are just the difference
4 between the net liquidation proceedings and the outstanding
5 principal balance of the loan at the time of liquidation; is
6 that correct?

7 A It's the reported amount to the trust. It -- net
8 liquidation -- it -- you know, depending on how you use your
9 definitions my understanding of a calculation of a loss on a
10 loan in RBMS transaction isn't just the, you know,
11 foreclosure proceeds, but it also involves expenses, re-
12 compensation of servicer advances, other elements.

13 Q Mr. Finkel, in Tab A of your binder you'll find your
14 deposition transcript. Can you please turn to page 106,
15 line 17?

16 A I'm sorry. This -- tab --

17 Q Tab A?

18 A Tab A. Okay. And page?

19 Q Page 106.

20 A Okay.

21 Q I'm going to read from your deposition, "Question: Do
22 you know what the elements of the realized loss figure are?"
23 This is on line 17.

24 "Answer: I assume you're asking what --effectively how
25 a realized loss number is arrived at.

1 "Question: Yeah. That's a good --

2 "Answer: Well, it's generally the difference between
3 the net liquidation proceeds, the current outstanding
4 principal balance of a loan. The net liquidation
5 proceeds have, you know, as you know, as you probably
6 know several elements to them."

7 Did I ask that question and did you give that answer?

8 A Yes.

9 Q All right. And to calculate the historical losses you
10 used the same data sources that Dr. Snow used with some
11 small adjustments to a cap or gaps in his data, correct?

12 A Yes. That's correct.

13 Q Turning --

14 A Can you repeat your question one more time? I'm sorry.
15 You went a little --

16 Q Oh, I'm sorry.

17 A -- quickly there.

18 Q So to calculate the historical losses you used the same
19 data sources that Dr. Snow used with some small adjustments
20 to a cap or some gaps in his data; is that correct?

21 A Well, it's a little more precise than that. I used Dr.
22 Snow's losses which only covered a portion of the 415,000
23 loans, and for the remainder I used the servicer data from
24 Wells Fargo and Nationstar.

25 Q So in turning to your calculation of projected losses

1 Professor Fischel used Andrew Davidson's LoanDynamix model
2 to calculate projected losses on the active loans on all the
3 trusts at issue in this case, correct?

4 A Yes.

5 Q And you also calculated projected losses by running
6 LoanDynamix on the active loans, correct?

7 A Correct.

8 Q And as of the date of your report there were
9 approximately 65,000 active loans in the population that was
10 the subject of your report; is that correct?

11 A That's correct.

12 Q For purposes of your report the term active loan means
13 a non-liquidated loan; is that correct?

14 A Correct.

15 Q And your calculation of projected losses on all the
16 active loans was \$1.371 billion, correct?

17 A That's correct.

18 Q And using LoanDynamix you were able to replicate
19 Professor Fischel's calculation of projected losses to
20 within .036 percent; is that correct?

21 A That's correct.

22 Q You view this difference as de minimis, correct?

23 A Correct.

24 Q Prior to this case you had no personal experience using
25 LoanDynamix in any of your work, correct?

1 A I use other -- I used other loan -- ADCO models. Did
2 you mention LoanDynamix or --

3 Q LoanDynamix.

4 A LoanDynamix? I don't think I had used the LDM model
5 previously. I had used other Andrew Davidson models.

6 Q Okay. But you had no personal experience using
7 LoanDynamix in any of your work; is that right?

8 A Previous to this project, no.

9 Q Okay. And you learned how LoanDynamix worked for the
10 purposes of this product -- project, sorry, by reading some
11 descriptive materials from Andrew Davidson and talking to
12 someone on your team who had used it before; is that
13 correct?

14 A It was a little more than that, but that's largely how
15 I learned about it. Yeah.

16 Q For issuing your report in this case on August 28th you
17 did not review Dr. Ellson's report for the purpose of
18 informing yourself about how LoanDynamix worked; is that
19 correct?

20 A I had reviewed a draft of Dr. Ellson's report and I did
21 learn some things about certainly the LoanKinetics model.
22 I'm not sure that the LoanDynamix model was referenced in
23 there.

24 Q You're not giving an opinion here today about the
25 reliability of the LoanDynamix model, correct?

1 A I -- well, I was asked today by counsel if I found it
2 to be reliable and my answer was yes. But that wasn't --
3 that wasn't an explicit -- it was not an explicit opinion in
4 my report, no.

5 Q Thanks.

6 (Pause)

7 Q Was Dr. Ellson's draft report listed in your materials
8 relied upon?

9 A I can't recall.

10 Q We'll take a look at TRX-651. I think it was in the
11 binder that your counsel handed to you.

12 A Yeah.

13 Q Do you see Dr. -- any of Dr. Ellson's reports listed
14 there?

15 A No.

16 Q Okay. Now can we turn back to the chart on page 29
17 that we looked at earlier in Tab 2 of your binder?

18 A Sure. Okay.

19 Q So Professor Fischel --

20 A I'm sorry. It was --

21 Q Oh.

22 A -- page 29, right? Okay. Here we are.

23 Q Professor Fischel also calculates recovery ratios for
24 some other settlements; is that correct?

25 A Yes.

1 Q You understand that Professor Fischel is giving an
2 opinion that the other settlements in this chart are
3 comparable to the present case; is that right?

4 A Yes. I understand that to be an opinion he's rendering
5 in this report.

6 Q Thanks.

7 And aside from calculating lifetime losses for the
8 trust at issue in this case you did not perform any analysis
9 of the other settlements listed in the chart in Professor
10 Fischel's report that we're looking at, correct?

11 A That's correct.

12 Q You're not offering any opinion about comparable
13 settlements, correct?

14 A Correct.

15 Q In fact, you're not replying at all to Professor
16 Fischel's opinion on comparable settlements; is that right?

17 A That's correct.

18 Q You actually don't view your opinion as directly
19 contradicting anything in his opinion; is that correct?

20 A I've made corrections to certain things that we -- I
21 have discussed in my testimony here today. I would consider
22 I suppose a correction to something he did a form of
23 contradiction.

24 Q Can you turn back to Tab A, page 87?

25 A Sure.

1 Q Actually, we're going to go to page 86, line 18.

2 A Okay.

3 Q All right.

4 "Question: So without consulting Dr. Fischel's report,
5 Professor Fischel's report, what opinion do you
6 understand him to be giving in this case?

7 "Answer: I understand, you know, I wasn't asked to
8 rebut his report. I was just asked to do some
9 calculations effectively alongside what he did. So my
10 overall views were that he was opining as to how investors
11 might consider litigation settlements and specifically
12 address some of the particular investor groups in this
13 litigation, and he also more relevant to my work
14 compared
15 various RMBS put back settlements to his lifetime
16 loss numbers that he calculated from Lehman portfolio
and laid
out the results of those, what he called comparable
settlement percentage -- percentages and recovery
ratios and settlement, ultimate settlement numbers,
settlement percentages.

20 "Question: So you said that you weren't asked to rebut
21 his report, but if you go back to PA-81 you did issue a
22 reply report in this case; is that correct?

23 "Answer: It's not called a reply report. It's called
24 -- it's an expert report.

25 "Question: Is it replying at all to Professor Fischel?

1 "Answer: It's tying out to some of his numbers and
2 it's making my own comparisons of other settlements that
3 he used in stating different amounts of the settlement
4 recovery ratios and other settlements that he sets
5 forth, but it's not an attempt to directly contradict him.
6 I think it just states different recovery ratios than he
7 states."

8 Did I ask that question and did you give that answer?

9 A In the deposition those were the answers I gave.

10 Q Thank you.

11 Now we're going to go to TRX-649, page 10.

12 Mr. Finkel, you calculated recovery ratios for the six
13 settlements set forth in the chart at the top of this page,
14 correct?

15 A Correct. Yes, I did.

16 Q Is this -- I'm sorry. I think it's page 10 of the
17 exhibit, page 9 is your report. Sorry, Mr. Finkel.

18 And you're aware that the plan administrators agreed to
19 seek estimation in this case at approximately \$2.38 billion;
20 is that correct?

21 A Yes.

22 Q And you did not actually calculate the recovery ratio
23 for the Lehman proposed allowed claim, correct?

24 A Well, I have a -- not in this table, no.

25 Q Okay. You just adopted Professor Fischel's recovery

1 ratio of 11.24 percent; is that right?

2 A Correct.

3 Q And you did not review the RMBS settlement agreement
4 between Lehman, the trustees and the institutional investors
5 before issuing your report, correct?

6 A Correct.

7 Q And you would call the recovery ratios in this chart
8 your computational conclusions; is that a fair assessment?

9 A Yes. I believe I referred to them as such in my
10 deposition.

11 Q And you view your computational conclusions and your
12 opinion as the same thing; is that right?

13 A Yes.

14 Q Now speaking generally the recovery ratio is the
15 settlement amount for a trust divided by the estimated
16 lifetime losses for that trust, correct?

17 A Yes.

18 Q And prior to your work in this case you have never been
19 asked to nor did you calculate a recovery ratio for any RMBS
20 put back settlements; is that right?

21 A That's correct.

22 Q Okay. So the chart on page 10 of TRX-649 lists the six
23 settlements for which you calculated recovery ratios; is
24 that correct?

25 A Yes.

1 Q And for the settlements listed in this chart you found
2 the settlement amount by reviewing the settlement notices
3 that the trustees sent to the investors; is that correct?

4 A That the trustee issued --

5 Q That were provided to --

6 A Right.

7 Q For the settlements listed in this chart you found the
8 settlement amount by reviewing the settlement notices that
9 were provided to investors by the trustees, correct?

10 A Again, they're issued. They don't directly provide
11 them to the investors. They count on others to provide them
12 to investors. Sorry for the small --

13 Q I understand.

14 A -- distinction.

15 Q It's complicated.

16 A Okay.

17 Q The settlement notices that are listed in your
18 materials were relied upon, correct?

19 A Yes.

20 Q And you understand that these are settlements in
21 residential mortgage put back cases involving individual
22 trusts, correct?

23 A Yes.

24 Q And these six settlements were provided to you by your
25 counsel at Holwell Shuster, correct?

1 A Correct.

2 Q And you and your team did not look for any other
3 settlements; is that right?

4 A That's correct.

5 Q Now the first five settlements listed on this chart
6 begin with Ace 2007; is that right?

7 A 2007 HE1.

8 Q Yeah. Well Ace 2007 HE, well, just Ace 2007?

9 A Right.

10 Q Okay. And that would indicate to you that these are
11 from the Ace 2007 shelf; is that right?

12 A Yes.

13 Q And it is not relevant to your opinion at all that
14 these settlements came from the same shelf; is that right?

15 A No.

16 Q And the settlement date for each of the Ace 2007
17 settlements is the same date, September 29th of 2016; is
18 that correct?

19 A Correct.

20 Q And it's not important in your opinion to know why
21 these settlements all have the same settlement date; is that
22 correct?

23 A It's -- no. It doesn't influence my calculation -- my
24 computations. No.

25 Q Now for all these settlements except for GEWMC 2006-1,

1 Holwell Shuster was counsel for the plaintiff; is that
2 correct?

3 A That's my understanding.

4 Q And the fact that the trustees' counsel here was
5 counsel in all of these cases was not important in your
6 opinion either, correct?

7 A It was not relevant for my computations. That's
8 correct.

9 Q The second column on the -- from the left on this chart
10 is called loan group, correct?

11 A Correct.

12 Q And the loan group for all six settlements is group 2;
13 is that correct?

14 A Correct.

15 Q Well, that means these settlements covered only one
16 group of loans in each of these trusts, correct?

17 A Correct.

18 Q So for these other put back litigation settlements
19 you're not offering any analysis of how the procedural
20 posture to litigations at the time the settlements were
21 entered into might have affected the ultimate settlement
22 amount; is that right?

23 A That's correct.

24 Q And you said earlier you were -- you were a lawyer and
25 a member of the bar, but you were inactive; is that right?

1 A I am inactive.

2 Q And you're not offering any legal opinions in this
3 case?

4 A No.

5 Q Okay. So you didn't analyze the default rates on the
6 loans in those trusts, correct?

7 A That's correct. I think we covered that in deposition
8 testimony as well, except for the fact that the losses in
9 those trusts obviously were part of my computations.

10 Q Right. But you didn't analyze them for purposes of
11 your report, correct?

12 A No. I didn't independently determine the default rate
13 per se.

14 Q And the types of collateral that were in those trusts,
15 that was not relevant to your analysis here either, correct?

16 A No.

17 Q And the vintage of the loans at issue in those
18 settlements was not relevant to your analysis either; is
19 that right?

20 A That's correct.

21 Q And you didn't do any analysis of which entities
22 originated the loans in these trusts, correct?

23 A No. And if I could say something on the vintage, you
24 know, the vintage effect, the vintage and the loan types as
25 you run through the ADCO model, you know, are relevant for

1 that model. But they were -- for my purposes they were just
2 inputs.

3 Q Okay. Fair clarification.

4 So it wasn't relevant to your opinion what proportion
5 of the settlement award in these six cases was allocated to
6 attorneys' fees or to reimburse any party other than the
7 certificate holders; is that right?

8 A That's correct.

9 Q Would you turn to, I think it's Tab 15, TRX-806.

10 A Okay.

11 (Pause)

12 A Yes. I'm there.

13 Q Okay. And this is the holder notice for the GEWMC
14 trust 2006-1, correct?

15 A Correct.

16 Q And that was a trust that was one of the settlements
17 you calculated recovery ratios for, correct?

18 A Yes.

19 Q Thank you.

20 And if you turn to page 3 of TRX-806 and look down at
21 the bottom of the page do you see where it says starting
22 about four lines from the bottom, approximately 16.6 million
23 of the settlement payment represents reimbursement of
24 certain fees and expenses incurred by the series 2006-1
25 trust or the trustee on its behalf in connection with

1 pursuing the group two litigation claims? Do you see that?

2 A Yes.

3 Q And you did not subtract the 16.6 million in
4 reimbursements from the settlement payment when you
5 calculated your recovery ratio, right?

6 A No.

7 Q And the 16.6 million, that represents about 20 percent
8 of the 80.5 million settlement payment?

9 A Yes. I think we went over this as well, but, yes, that
10 sounds about right.

11 Q Okay. So it wasn't relevant to your opinion about any
12 of the six settlements, whether the trustees in any of those
13 cases had received direction from any certificate holders to
14 pursue or settle litigations, right?

15 A No.

16 MR. WAISNOR: Can we put -- can we put up the chart
17 again from Tab 1 on page 10?

18 (Pause)

19 MR. WAISNOR: It's -- yeah.

20 BY MR. WAISNOR:

21 Q So for the Ace 2000 settlement you understand that the
22 issuer in that case was Deutsche Bank, correct?

23 A Yes.

24 Q It was not relevant to your opinion whether Deutsche
25 Bank was involved in litigation with any governmental agency

1 relating to their RBMS practices, correct?

2 A It was not relevant. Yes. That's correct. It was not
3 relevant to my computations.

4 Q In fact, you're aware that Deutsche Bank settled with
5 the DOJ earlier this year an investigation relating to RMBS
6 practices, correct?

7 A I am.

8 Q And you're aware that it submitted a statement of facts
9 in connection with that settlement, correct?

10 A I am.

11 Q And were you aware when you gave your report that all
12 of the Ace 2000 settlements you calculated recovery ratios
13 for were covered by the settlement with the DOJ?

14 A Again, the DOJ settlement would have -- that happened
15 in January of this year, right? And my report was in
16 August. I don't -- can you repeat the question again? I'm
17 just trying to understand the --

18 Q Yeah. Were you aware that all of the Ace 2000
19 settlements you calculated recovery ratios for recovered by
20 the DOH -- DOJ settlement at the date you issued your expert
21 report in this case?

22 A I wasn't -- it wasn't relevant for my computations.

23 Q So you weren't aware, correct?

24 A I -- no.

25 Q But whether you were not -- would not matter to your

1 opinion in this case at all, correct?

2 A No. I -- it wouldn't matter for the opinions I've
3 given.

4 Q Okay. So taking again a look at the chart up on the
5 screen here, besides comparing their recovery ratios to the
6 recovery ratio calculated by Professor Fischel, you did not
7 do anything else to compare these six settlements to the
8 Lehman proposed allowed claim here, correct?

9 A Correct. I simply calculated the estimated lifetime
10 losses by the settlement amounts of those and created the
11 range that I did.

12 Q Okay. Could you take a look at page 21 through 23 of
13 Professor Fischel's report?

14 A Sure. What tab are we on now, back to --

15 Q Tab 2 again.

16 A Okay. Yeah.

17 (Pause)

18 A I'm sorry. What page, sir?

19 Q It is page 21.

20 A Okay.

21 Q 21 through 23.

22 A Report page 21, not exhibit page?

23 Q No, the exhibit page.

24 A Yeah. Exhibit page 21. Okay.

25 Q If you could just flip through it.

1 A Oh, it's a settlement. Okay.

2 Q So do you recognize these nine factors?

3 A Yes.

4 Q You did not analyze any of these factors for the
5 settlements for which you calculated recovery ratios,
6 correct?

7 A Correct.

8 Q Okay. Sorry to make you keep turning back, but if you
9 could go to page 11 of TRX-649.

10 A Sure. Page 11? Sure.

11 (Pause)

12 A Yeah.

13 Q And look at paragraph 42, please.

14 A Yes.

15 Q Now you say in paragraph 42 that the recovery
16 percentages you calculated are consistently and materially
17 higher than the 11.24 percent recovery percentage based on
18 the Lehman allowed claim amount, correct?

19 A Correct.

20 Q And you base the statement that these recovery
21 percentages are consistently and materially higher on your
22 common sense view as a finance professional, right?

23 A Yes. That would be --

24 Q You have not done any analysis of whether the recovery
25 ratio for Lehman proposed allowed claim is materially

1 different from the recovery ratios that you were asked to
2 calculate for the six settlements that are part of your
3 report, correct?

4 A I'm not sure what you mean by that. If you could
5 repeat the question, please.

6 Q You had not done any analysis of whether the recovery
7 ratio for Lehman's proposed allowed claim is materially
8 different from the recovery ratios that you were asked to
9 calculate for the six settlements as to any particular
10 investor or trust?

11 A Not as to any particular investor or trust. That's
12 correct.

13 Q Okay. You're not giving an opinion on whether the
14 difference -- sorry. Strike that.

15 You're not offering any opinion about how to determine
16 if one recovery ratio is considered materially or
17 consistently higher than another recovery ratio, correct?

18 A Well, I'm -- I've certainly stated that 23 to 23.75
19 percent is materially higher than 11.24. So I would have to
20 answer that, that that is one comparison I've made that I've
21 said is materially different.

22 MR. WAISNOR: Your Honor, I just have one more
23 module, I think.

24 THE COURT: Okay. Did you want to take a brief
25 break?

1 MR. WAISNOR: Oh, no. I can keep going if --

2 THE COURT: Mr. Finkel, how are you doing?

3 THE WITNESS: I'm doing great.

4 THE COURT: Are you sure?

5 THE WITNESS: Yeah.

6 THE COURT: Everyone okay over here or do you want
7 a break?

8 Mr. Cosenza, a descending vote.

9 MR. COSENZA: I think it would be good for --

10 THE COURT: All right.

11 MR. COSENZA: -- five minutes.

12 THE COURT: Let's take a -- let's take a five-
13 minute break and then we'll go to conclusion.

14 MR. COSENZA: Sure.

15 THE COURT: All right. We'll surely be done before
16 5:30, yes?

17 MR. WAISNOR: Yes.

18 THE COURT: Thank you.

19 MR. COSENZA: Thank you, Your Honor.

20 THE COURT: Be back in five minutes.

21 (Recess taken at 4:31 p.m.; reconvened at 4:41 p.m.)

22 THE COURT: All right. Let's keep going.

23 MR. WAISNOR: Thank you, Your Honor.

24 BY MR. WAISNOR:

25 Q Mr. Finkel, you testified earlier that you have given

1 opinions in other RMBS put back cases; is that correct?

2 A I have.

3 Q Okay. And you're not giving any opinion in this case
4 about whether there were breaches of representations and
5 warranties on any of the loans in this case, correct?

6 A Correct.

7 Q And you're not offering any opinion as to whether any
8 of the breaches had a material and adverse effect; is that
9 correct?

10 A That's correct.

11 Q And you're not offering any opinion regarding
12 statistical sampling; is that correct?

13 A That's correct.

14 Q You're not offering any opinion on the appropriate
15 measure of damages in this case, correct?

16 A Correct.

17 Q You're not offering any opinion on the commercial
18 understanding of any of the clauses in the agreements
19 covering the trusts at issue in this case, correct?

20 A Correct.

21 Q You're not offering any opinions about the calculation
22 of the repurchase price, correct?

23 A Correct.

24 Q Now prior to being hired by Duff & Phelps you were CEO
25 and managing member of Dynamic Credit Partners, correct?

1 A Correct. I'm still technically the CEO and --

2 Q Right.

3 A -- it still exists.

4 Q Dynamic Credit Partners is still an investment manager,
5 correct?

6 A Correct.

7 Q 2010 you were hired by Duff & Phelps, correct?

8 A Correct.

9 Q 2012 you became the leader of Duff & Phelps financial
10 crisis disputes practice, correct?

11 A Correct.

12 Q And that's a group within Duff & Phelps; is that right?

13 A It's part of our disputes and investigations business
14 unit. Yes.

15 Q Okay. And one of the people who worked for you in
16 financial crisis disputes was Edmond Esses; is that right?

17 A Correct. He's still a colleague.

18 Q Okay. And during the 2014 time up until this year you
19 were aware that Mr. Esses was working on a loan level review
20 protocol in connection with the Lehman bankruptcy, correct?

21 A Yes.

22 Q And aside from your expert work in connection with this
23 estimation proceeding you had no formal role in the protocol
24 review project, correct?

25 A Correct, no formal role.

1 Q Okay. You did not work with Mr. Aronoff on any
2 projects when he was at Duff & Phelps, correct?

3 A I collaborated with him a little bit, but we
4 collaborated and shared ideas, things like that.

5 Q Can we go to your deposition page 202, line 3?

6 A Sure. Sorry, this is tab -- yeah, here we go.

7 Q It says Tab A.

8 A And page? I'm sorry. Which page again?

9 Q And you are on -- actually, can we go to 201, line 8,
10 please? "Question: You said you brought in some external
11 people regarding financial crisis disputes. Was one of them
12 Jim Aronoff?"

13 A Yes.

14 Q "Answer: I did have a role in bringing Jim Aronoff
15 into the firm. He didn't work on my team. He had his
16 own practice. He certainly worked on financial crisis
17 related disputes.

18 "Question: Did he report directly to you?

19 "Answer: No.

20 "Question: Was he a lower title than you or the same
21 title?

22 "Answer: He was managing director. I was still
23 technically when I hired him the national practice
24 leader.

25 "Question: Were you also a managing director?

1 "Answer: I was also a managing director.

2 "Question: Did you ever work together on any projects?

3 "Answer: We really didn't. We obviously spoke with
4 each other, but we didn't really work together per se on
5 projects."

6 Did I ask those questions and did you give those
7 answers?

8 A Yes. And I think it's consistent with -- that we
9 collaborated and shared ideas.

10 Q Okay. You had no supervisory and management role in
11 connection with the protocol, correct?

12 A Correct.

13 Q Okay. Other than your expert work you were not
14 otherwise involved in the protocol, correct?

15 A Correct.

16 Q Okay. And you didn't receive any updates about how the
17 protocol was going, any formal updates about how the
18 protocol was going? Sorry.

19 A No.

20 Q And when I asked you at deposition you didn't know how
21 much Duff & Phelps had earned for its work in connection
22 with the protocol or how many hours it worked on the
23 protocol, correct?

24 A Correct.

25 Q Mr. Finkel, you testified earlier that you were asked

1 by Holwell Shuster to calculate recovery ratios for six put
2 back settlements; is that correct?

3 A Yes.

4 Q You did not calculate a recovery ratio for the Deutsche
5 Vault A Securities Mortgage Loan Trust Series 2007 OA3,
6 correct?

7 A I don't believe so.

8 Q Okay. And so we save everyone some time if I call this
9 the DVault 2007OA3 trust you'll be able to follow me?

10 A Sure.

11 Q Okay. Would you turn to Tab 3, PA-88?

12 A I'm there.

13 Q Mr. Finkel, do you recognize this as the settlement
14 notice for DVault 2007OA3 that was shown to you during your
15 deposition?

16 A I'm sorry. I see 07OA3.

17 Q Oh.

18 A I think you just said 08; is that right?

19 Q I think I said 07, but, yes, it's 2007OA3.

20 A Okay. Yes. I recognize this as that.

21 Q Okay. Can you turn to page 10 of the exhibit, please?

22 A Okay.

23 Q Do you see in the first paragraph where it says HSBC
24 Bank USA is the trustee?

25 A Yes.

1 Q Okay. Now if you look down at Paragraph B you can see
2 that it says that the trust, by and through the trustee, has
3 asserted certain claims against DBSP in the United States
4 District Court of the Southern District of New York; is that
5 right?

6 A Yes.

7 Q Okay. And you understand DBSP to refer to Deutsch Bank
8 Structured Providence; is that correct?

9 A Yes.

10 Q Okay. Can you turn to page 16, please?

11 (Pause)

12 A Okay.

13 Q Do you see in paragraph 4 a payment where it says that
14 DBSP shall pay to the trust \$52.52 million?

15 A Yes. Yes, I do.

16 Q In that --

17 A Sorry.

18 Q In that same paragraph there's no indication that this
19 payment is being made for the benefit of any particular
20 group of loans in the trust; is that correct?

21 A I would have to look at -- not in this paragraph.

22 Q Okay.

23 A I would have to look at the entire notice to see if it
24 -- what group it covered.

25 Q And on page 27, if you go to that, on the left hand

1 side do you see a signature block for Holwell Shuster &
2 Goldberg as attorneys for plaintiff?

3 A Yes.

4 Q Okay. Can you turn to Tab 4, please?

5 A Okay.

6 Q Mr. Finkel, this looks like -- does this look like a
7 September 2017 remittance report for the DVault 20070A3
8 trust?

9 A It does.

10 Q And remittance reports are provided to certificate
11 holders each month, correct?

12 MS. DELUCIA: Your Honor, we object on the same
13 basis that we were precluded from questioning Mr. Finkel
14 about the MARM certificate holder notice. This I presume
15 would be accessible via the same CDS link database.

16 THE COURT: Was this shown to him during his
17 deposition?

18 MS. DELUCIA: I don't believe this document was.

19 MR. WAISNOR: This was not, Your Honor. It was
20 disclosed on our exhibit list, but it was not shown to him
21 during the deposition.

22 THE COURT: Well, if it wasn't shown to him during
23 his deposition then the sauce for the goose rule applies and
24 you can't take him through it. All right.

25 MR. WAISNOR: Thank you, Your Honor.

1 (Pause)

2 MR. WAISNOR: Your Honor, could I have a moment to
3 confer with --

4 THE COURT: Sure.

5 MR. WAISNOR: -- (indiscernible)?

6 THE COURT: Yes. Of course.

7 (Pause)

8 BY MR. WAISNOR:

9 Q Mr. Finkel, do you recall during your deposition I
10 asked you to calculate a recovery ratio for the 20070A3
11 trust?

12 A Vaguely.

13 Q Okay. Could you take a look at page 184 of your
14 deposition transcript, line 19?

15 (Pause)

16 MS. DELUCIA: Your Honor, if I may?

17 THE COURT: Yes.

18 MS. DELUCIA: If Mr. Waisnor is planning to ask Mr.
19 Finkel to calculate a recovery ratio on the fly for which
20 there are no established facts about lifetime losses or the
21 like, that seems inappropriate.

22 THE COURT: Okay. But so far we're just looking at
23 a Q&A in a deposition, so let's -- we'll see where it --
24 let's see where it goes.

25 Go ahead, Mr. Waisnor.

1 BY MR. WAISNOR:

2 Q Do you call -- do you recall in this deposition I asked
3 you to assume that the estimated lifetime losses on this
4 trust were \$421 million?

5 A Yes. Looking at the page is very helpful to refresh my
6 recollection. Yes.

7 Q And do you recall that you did this calculation in your
8 deposition and you calculated that the recovery ratio taking
9 52.52 million into 421 million was 12.47 percent?

10 A Right. I think you had me out -- with my calculator
11 doing that. Yes.

12 Q Okay. Thank you.

13 Would you please turn to -- do you have any reason to
14 think this is not the property recovery ratio for the -- for
15 this case?

16 A Well, yes, because you're asking me to assume the
17 lifetime losses so I can't be sure that it's a valid
18 recovery ratio.

19 Q Okay.

20 A I was -- it's based off of a -- it's -- you know, off
21 an assumption.

22 Q But if you were provided with 421 million as the
23 lifetime losses though, then it wouldn't -- it wouldn't be
24 hypothetical anymore, right?

25 A Right. If I could either estimate them independently

1 or it was represented to me in some other way, yes.

2 Q Yes. Mr. Finkel, can you just turn to Tab 5, PA-89?

3 A Tab 5?

4 (Pause)

5 A And what page, I'm sorry?

6 Q This is just page one.

7 A Okay.

8 Q Do you recall that this is a settlement notice for
9 Deutsche All Day Securities Mortgage Loan Trust Series
10 2007OA4 that was also shown to you during your deposition?

11 A Yes. I -- the same kind of vague recollection.

12 Q Okay. And if you look on the first page there it says
13 this notice is being sent to certificate holders by Wells
14 Fargo on July 15, 2015, correct?

15 A I'm sorry. Could you refer me to that?

16 Q It's just the first line on page 1.

17 A On -- I'm sorry. I'm sorry to be slow. On page 1 of -
18 -

19 Q Oh, on page 1 of the exhibit.

20 A Okay. Yes. From HSBC Bank as trustee.

21 Q And, again, if I refer to this as DVault 2007OA4 you'll
22 know what I mean, correct?

23 A Yes.

24 Q Now Holwell Shuster also did not ask you to calculate a
25 recovery ration for DVault 2007OA4; is that right?

1 A That's correct.

2 Q And this trust again was issued by Deutsche Bank; is
3 that right?

4 A It would have been another Deutsche Bank RMBS issuance,
5 yes.

6 Q Yes. If you would turn to page 10 it says HSBC --
7 actually, could you turn to page 10, please?

8 A Okay.

9 Q And, again, in the first paragraph there it says that
10 HSBC is the trustee?

11 A Yes.

12 (Pause)

13 Q Paragraph B says that the trust is asserting claims
14 against DBSP in an action in the Southern District of New
15 York, correct?

16 A Yes.

17 Q Okay. If you turn to page 16, paragraph 4 it says that
18 DBSP shall pay to the trust 91.18 million, correct?

19 A Correct.

20 Q And that's -- the later part of the sentence says it
21 shall be allocated to certificates backed by group one,
22 group two and group three loans; is that right?

23 A Yes.

24 Q Okay. If you would turn to page 27 and you see on the
25 left there's another signature block here for some attorneys

1 at Holwell Shuster, correct?

2 A Yes.

3 Q And if you turn to Tab 6 is this -- does this look like
4 another remittance report for the 20070A4 trust?

5 THE COURT: Ms. DeLucia.

6 MS. DELUCIA: Objection.

7 THE COURT: Same objection?

8 MS. DELUCIA: Same objection.

9 THE COURT: Same answer, Mr. Waisnor?

10 MR. WAISNOR: No. It was not shown to him during
11 his deposition, Your Honor, but I think this goes to
12 impeachment and credibility. These were settlements that
13 were not shown to him and he didn't analyze by Holwell
14 Shuster. I think it's fair to show him these documents and
15 ask --

16 THE COURT: I'll --

17 MR. WAISNOR: -- him the recovery to recovery
18 ratio.

19 THE COURT: I think it's fair to show him -- to --
20 I think you have demonstrated that he has not done any
21 calculation with respect to these settlements. And the
22 observation that you can make further in that regard is an
23 observation that you can make further in that regard.

24 But I don't think it's appropriate to ask Mr.
25 Finkel to do any calculation based on a document that he

1 wasn't shown in his deposition unless you had him run
2 through the calculation in the deposition.

3 MR. WAISNOR: All right. Can I --

4 THE COURT: Sure.

5 (Sidebar off the record)

6 THE COURT: Todd, you've been overruled.

7 (Laughter)

8 THE COURT: It's 5:00.

9 MR. WAISNOR: We'll move on, Your Honor.

10 MR. COSENZA: Almost, Your Honor.

11 THE COURT: Yes.

12 MR. WAISNOR: We'll move on and get this done.

13 BY MR. WAISNOR:

14 Q Mr. Finkel, can you turn to -- again, to Tab A, page
15 188 of your deposition transcript, please?

16 A Okay.

17 (Pause)

18 Q And do you recall at your deposition I asked you to
19 divide the 91.18 million number by 702 million and calculate
20 a recovery ratio?

21 A Yes.

22 Q And do you recall that that recovery ratio was 12.99
23 percent?

24 A That was the number I calculated with the few caveats
25 following certain other questions. Yes.

1 Q Okay. Did Holwell Shuster ask you to calculate a
2 recovery ratio for any other settlements?

3 A No.

4 MR. WAISNOR: Your Honor, may I just have a minute?

5 THE COURT: Sure.

6 (Pause)

7 MR. WAISNOR: No further questions.

8 THE COURT: Okay. Thank you, Mr. Waisnor.

9 Ms. DeLucia, do you have anything?

10 MS. DELUCIA: Two quick questions.

11 THE COURT: Sure.

12 MS. DELUCIA: Less than five minutes.

13 THE COURT: No problem.

14 (Pause)

15 REDIRECT EXAMINATION

16 BY MS. DELUCIA:

17 Q Mr. Finkel, a moment ago Mr. Waisnor asked you about
18 Deutsche Bank's settlement with the DOJ and the statement of
19 facts that it submitted therewith. Do you remember that
20 testimony?

21 A Yes.

22 Q Are you aware, sir, that the DOJ settlement became
23 public after the Ace cases that you considered were settled?

24 A Oh, yes. Absolutely they -- these cases were the prior
25 year at least.

1 Q Mr. Waisnor also asked you some questions about the
2 settlements that Professor Fischel considered. Do you
3 remember that?

4 A Yes.

5 Q Are you aware whether Professor Fischel deducted the
6 four percent or more counsel fees that were paid out from
7 those settlement numbers before he calculated his recovery
8 ratios?

9 A I don't believe he did.

10 Q Okay.

11 MS. DELUCIA: Nothing further.

12 THE COURT: Okay. Thank you very much.

13 Mr. Waisnor, I assume nothing further?

14 MR. WAISNOR: No further questions, Your Honor.

15 THE COURT: Very good.

16 Thank you, Mr. Finkel.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: It was nice to see you again.

19 THE WITNESS: Nice to see you.

20 (Laughter)

21 THE COURT: Okay. So do we have any further
22 housekeeping?

23 MR. SHUSTER: I --

24 THE COURT: We do.

25 MR. SHUSTER: Yeah. If we could take a moment to -

1 -

2 THE COURT: Should we --

3 MR. SHUSTER: -- discuss scheduling with Your
4 Honor?

5 THE COURT: Sure. Absolutely. But we can close --

6 MR. SHUSTER: Yes.

7 THE COURT: -- we can close the record for tonight.

8 MR. SHUSTER: Yes.

9 THE COURT: Yes. So just for those folks who are
10 following the bouncing ball, there will be no trial on
11 Tuesday and there -- I'm not otherwise asking you to file a
12 notice of that on the docket. So I'm making that statement
13 now and everybody's confirming that that's the case and that
14 we will resume on Wednesday, whatever that date is, next
15 Wednesday, at 10:00, Wednesday, the 17th of January.

16 MR. SHUSTER: Although that's in part what I wanted
17 to --

18 THE COURT: I see.

19 MR. SHUSTER: -- speak to the Court about.

20 THE COURT: Okay.

21 MR. SHUSTER: But certainly we will not be --

22 THE COURT: If there's -- if it's something other
23 than Wednesday, January 17th then I'm just going to ask --
24 I'll ask you to file a notice on the docket so the public
25 knows.

1 MR. COSENZA: We will do that, Your Honor.

2 THE COURT: Okay. All right. So other folks are
3 excused and I'll meet you back in the conference room.

4 MR. SHUSTER: Thank you, Your Honor.

5 THE COURT: Thank you, again, Mr. Finkel.

6 (Whereupon, these proceedings concluded at 5:03 p.m.)

7 * * * * *

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I N D E X

T E S T I M O N Y

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WITNESS

EXAM BY

PAGE

DR. RICHARD WAYNE

ELLSON

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C E R T I F I C A T I O N

We, Dawn South and Sherri L. Breach, certify that the
foregoing transcript is a true and accurate record of the
proceedings.

Dawn South

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